Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the

Supreme Court of the United States

No. 74-107

Peter Preiser, Commissioner of Correctional Services of New York State, and Harold N. Butler, Superintendent of Wallkill Correctional Facility,

Petitioners,

against

James Newkirk,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Petition for Certiorari Filed August 12, 1974,
Certiorari Granted October 21, 1974.

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Relevant Docket Entries—District Court.

CIVIL DOCKET
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Judge Ward

72 Civ. 2851

James Newkirk, Carl Oliver, Cornelius Lucas,

Plaintiffs,

against

Harold N. Butler, Superintendent of Walkill Correctional Facility, and Russell G. Oswald, Commissioner of Correctional Services,

Defendants.

July 5, 1972	Filed Complaint & Issued Summons
July 13, 1972	Filed Amended Complaint
August 1, 1972	Filed Order to Show Cause re: Prelim. Injunction Returnable 7/14/72 before McClean, D.J.
August 1, 1972	Filed Memo. End. on show caused filed this day. Plaintiffs' motion for a prelim. injunction is denied. Counsel are requested to meet with the Court on 9/6/72 to fix a date for trial.
September 15, 1972	Filed Answer
November 21, 1972	Filed Answer of Defendants to Amended Complaint

November 27, 1972	Before Ward, J. Trial Begun—Non-jury
November 28, 1972	Trial continued and concluded Decision Reserved . . . Plaintiffs' motion to dismiss action as to Rodriguez & Oliver granted.
March 22, 1973	Filed Notice of Motion returnable 4/3/73 re: dismiss complaint.
April 10, 1973	Filed plaintiffs' memorandum and affidavit in opposition to defendants' motion to dismiss complaint on grounds of mootness.
October 9, 1973	Filed Opinion #39,889—Declaratory relief is granted and injunction ordering the return of the prisoners to Wallkill is dismissed as moot and the injunction against future summary transfer is dismissed because in the present posture of the case there is not a sufficiently delineated controversy to merit its adjudication—The foregoing constitutes the findings of fact and conclusions of law of the court for the purposes of Rule 52, F.R.C.P. Settle Judgement on Notice—Ward, J.
October 26, 1973	Filed Judgment—Action is dismissed as to plaintiff C. Lucas. Plaintiff Newkirk's interest in continuing to be situated at Wallkill is sufficiently great that transfer in direct response to his activity deserves some sort of due process at the very least the knowledge that it is a possibility—Ward J.—Judgment entered—Clerk.
November 20, 1973	Filed defendants' notice of appeal from decision dated 10/9/73 and Final Judgment dated 10/26/73
December 27, 1973	Certified Record to the United States Court of Appeals.

Relevant Docket Entries—Court of Appeals.

General Docket
UNITED STATES COURT OF APPEALS
For the Second Circuit

Case No. 73-2853

James Newkirk,
Plaintiff-Appellee,
against
Harold N. Butler, Et Ano.,
Defendants-Appellants.

11-23-73	Filed copy of docket entries and notice of appeal
12-27-73	Filed record (original papers of district court)
3- 7-74	Filed Appellants' brief, appendix and exhibits
4-29-74	Filed Appellees' brief and exhibits
5- 9-74	Argument heard by Anderson, Feinberg and Mansfield, CJJ.
6- 3-74	Judgment affirmed with modification, Mansfield, C.J.
6- 3-74	Filed Judgment
7-10-74	Issued Mandate (opinion and judgment)
7-24-74	Original record returned to district court
7-26-74	Filed receipt of return of original record to district court
8-19-74	Filed notice of filing of petition for writ of certiorari (SC #74-107)

Testimony at Trial of Respondent James Newkirk [Trial Minutes, pp. 98-167].

* * * * * *

James Newkirk, Jr., one of the plaintiffs, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pachoda:

Q. Mr. Newkirk, how old are you? A. I am 35 years of age.

Q. When did you first enter the New York State prison system, this last time? A. I came into detention in 1961, November 4th.

Q. When was the conviction in your case? A. November 4, 1962.

Q. Did you plead guilty? A. Yes, I did.

Q. What charge was that? A. Murder in the second degree.

Q. What sentence did you receive? (99) A. 20 to life.

Q. How far on the outside have you gone in school? A. In the 10th grade.

Q. When did you first enter one of the state prisons? A. March 15, 1962.

Q. When did you first apply for the Wallkill Correctional Facility? A. I think it was roughly around 1965.

Q. Prior to that how many of the other state institutions, if you recall, had you been in? A. I had been in Sing Sing, and Green Haven, Green Haven, where I applied for transfer to Wallkill.

Q. How did you hear about the Wallkill Correctional Facility? A. I first heard about it when I first came through Sing Sing orientation.

Q. Why did you apply to enter Wallkill? A. Because I was informed at that time there was a possibility I could learn other trades that wasn't available to me in the other max institutions.

Q. What happened when you applied in 1965? A. At the time I applied I think I spoke with Mr. Sheehy, I think was the name, who was the superintendent of Wallkill.

(100) The Court: Could we have that name spelled, for the record?

Mr. Butler: S-h-e-e-h-y.

The Court: Mr. Sheehy?

Mr. Butler: Mr. John Sheehy.

The Court: Thank you.

Q. Do you recall what the conversation was with Mr. Sheehy? A. Yes, I do. At that time he informed me I had too much time. They only took people that had a certain amount of time before going to the Parole Board, and I think in his calculation I had too much time at that time, which was somewhere in the area of 25 years.

Q. When do you appear before the Parole Board? A. 1975.

Q. That will be the first time you appear before the Board? A. Yes, that is correct.

Q. Did Mr. Sheehy indicate that your record was acceptable or not acceptable for Wallkill, at the other institution? A. He pointed out that I was acceptable but with one stipulation, that I had too much time at that time, but my institution record and everything else aside from that, I (101) would be accepted at a later time if there was nothing against my conduct in other institutions.

Q. Did you see Mr. Sheehy on other occasions? A. Yes, numerous times.

Q. Where was this? A. At Green Haven.

Q. Mr. Sheehy would come to Green Haven and talk to you? A. Yes. Every time he came, he would call me down. I didn't have to put down for the interview.

Q. You were on the list who applied to get into Wallkill? A. Yes.

Q. At some point did you leave Green Haven? A. Yes.

Q. When? A. 1968.

Q. Where did you go? A. Auburn.

Q. What were you told at Green Haven about your transfer to Auburn? A. I was told that if I was to wait at Green Haven for a couple of years I could take a transfer to Auburn and perhaps pursue a trade there, something that I had been (102) doing on the outside, that I could get into it again there. I told them I would accept that.

Q. Did they indicate the possibility after that period of time you would be acceptable at Wallkill? A. Yes.

Q. What did they say with the trade you would be able to pursue at Auburn? A. They said I would be able to get it there. I had a wish to pursue auto mechanics.

Q. Prior to entering prison, had you worked as an auto mechanic or with cars? A. Yes, I worked with cars.

Q. Had you done that for a number of years? A. I did it ever since I was a certain age. My father was a mechanic and I was always around cars.

Q. Was it stated to you that at Auburn you would be able to work as an auto mechanic? A. Yes.

Q. When you arrived at Auburn, what happened? A. When I first went in there I was asked what I wished to do while I was there. I reinstated myself on my intention on getting into auto mechanics, and at that time they put me into idle and I stayed in there for, perhaps, two months, roughly, and then I was put into the (103) mess hall, and then I went through another waiting period, at which time I had appealed to the school to try to get into a program. By appealing to the school, I was allowed to take vocational, the schooling, that is, classes and what not, and then at a later date, by further appealing, I got into the auto mechanics, but not the auto mechanics, but into the body part.

Q. While at Auburn you never really got into the auto mechanics? A. No.

Q. When did you finally enter Wallkill? A. April 15, 1971.

Q. You remained at Wallkill until when? A. June 8, 1972.

Q. On that date was the transfer made to Clinton? A. Yes.

> The Court: That beginning date, Mr. Newkirk, was April 15, 1971? That is when you came to Wallkill?
>
> The Witness: Yes, that is correct.

Q. I would like to ask you what interests that you have pursued or you plan to pursue are the primary ones in your life? A. The primary ones is truck driving, auto mechanics, anything dealing with automobiles, music, and things of (104) this nature, and my art work, painting.

Q. And what people in your life are you close to and plan to continue a relationship with? A. My immediate family and friends.

Q. Turning to the first one of these, were you able to pursue your interests in driving and in cars and auto mechanics while at Wallkill? A. Yes, I was.

Q. Could you describe to us what activities you were able to engage in at Wallkill in this area? A. At Wallkill I did auto mechanics for a while. Then I left that and went to truck driving.

Q. The first thing, when you did auto mechanics, under what circumstances was this? A. Under the vocation.

Q. It was a class? A. Yes, where they teach auto mechanics. That was a part of the school program.

Q. Did you have an instructor? A. Yes—as a matter of fact, two instructors.

Q. Was there a lesson each day? A. Yes. Each morning for about an hour or so we always had class on the different structure of the cars and the component parts of them.

(105) Q. Then would you work on cars as well? A. Yes. After class, that was the general idea, the ones that was qualified to have a car by themself or with someone less qualified would start work on the car and whatever the situation was, they were supposed to take care of that job.

Q. Were you qualified to work on a car by yourself? A. Yes, I was.

Q. Did you request to change that and drive a truck? A. Well, yes, I did. Prior to getting into the auto shop, I had decided to put down for my license, driver's license to drive, and I figured I would stay in the auto shop for a certain part of the time and then become a driver, if it was possible. So the time I was in the auto shop I took my test for the driver's license and got that.

Q. While you were in the vocational shop, were you also attending other classes? A. Yes. I took up math, English, history and science.

Q. These are high school level courses? A. Yes.

Q. Can you briefly describe what kind of truck you were driving and what jobs it entailed? A. Most of the trucks was Dodges, smaller trucks, (106) like pick-ups, and some of them was large dump trucks.

Q. Prior to entering prison you had worked as a driver? A. I used to drive a tractor-trailer on the outside.

Q. Who did you drive around? A. We used to take different gangs from one part of the institution property to another part. If the working gang—it was outside details.

Q. At times did you have to go outside the prison grounds? A. Sometimes we would be on the main highway.

Q. Was a guard with you when you made these trips? A. When you take out a gang you always use a guard or civilian or supervisor with a gang. But when I am coming back or going somewhere else to pick up a gang, usually no guard is with me.

Q. The guard is with you when they had to guard other inmates you were driving? A. Yes.

Q. There were times you would drive the truck alone? A. Yes.

Q. Were there any gates you had to go through as you drove along? A. No, there was no gates.

(107) Q. When you arrived at Clinton, what work did you do—strike that.

When you first arrived at Clinton, what did you do? A. When I first arrived at Clinton I was put in idle.

Q. What does that mean? A. Idle is where you don't do anything, but you can go out and eat, but you don't do any work.

Q. The periods you were not eating, where were you located? A. In a cell.

Q. Was the cell locked? A. Yes.

Q. What periods of time were you allowed out of that cell? A. I would say for about better than an hour.

Q. That was to eat? A. Yes.

Q. Were you allowed out for any other reasons? A. No.

Q. If you had to use the toilet facilities, how did you do that? A. In the cell.

Q. There is a toilet in the cell? A. Yes.

(108) Q. An open toilet? A. Yes.

Q. You did not have any recreation at that time? A. No. I was locked up.

Q. Were any other inmates allowed in your cell? A. No.

Q. How long did you remain in idle status? A. Well, from June 8th to July 11th, if I recall correctly—July 11th.

Q. That would be about four and a half weeks? A. Something like that.

Q. Did you request at any point during this time a specific assignment at Clinton? A. Yes. After I was there about two weeks I was called down to find out exactly what I wanted to do and informed of a program, and at that time I informed them I would like to drive or go into auto mechanics.

Q. You told them you were interested in doing auto mechanics or driving? A. Yes, that is correct.

Q. Then you went back and finished your idle status? A. Yes.

Q. What assignment did you get? A. Well, at a later date, I think it was roughly around (109) the 10th of July, I was called back down to this same assignment situation and I was then asked would I accept a job working at the superintendent's house.

Q. What did you do? A. I accepted the job.

Q. What do you have to do when you work in the superintendent's house? A. Well, housekeeping. That consists of waiting on people, waiting on the table, keeping the house clean and from time to time doing cooking for the superintendent and his Mrs.—just keeping the house clean, bathroom, turning the bed back—

Q. You work in the superintendent's house? A. Yes, that is correct.

Q. You have to clean the house? A. Yes.

Q. And make the beds in the house? A. Yes.

Q. Turn down the beds in the house? A. Yes.

Q. And serve the superintendent? A. Yes.

Q. When he has guests, you serve them too? A. That is correct.

(110) Q. Had you ever worked on this kind of work prior to entering prison? A. No.

Q. Do you have any desire to be a servant in a white man's house when you leave prison? A. None whatsoever.

Q. What time do you get up in the morning at Clinton Prison? A. About a quarter to 6.

Q. And what did you do? A. Get dressed and about 6 o'clock I am taken out of the cell, to the front part of the administration—

Q. How are you taken out of the cell? A. An officer comes and picks you up.

Q. Does he have to unlock your door? A. Well, the block officer unlocks your door, but at the end of the gallery there is another door which the officer has to unlock and he unlocks two doors and takes you part of the way and the officer has to unlock another door to get to the front part of the administration.

Q. You are escorted from door-to-door by one guard or another guard? A. Yes.

Q. You wait while the locked gate is opened? (111) A. Yes.

Q. And then another guard escorts you to the warden's house? A. Yes. You can be there about ten or fifteen minutes before another guard comes on to take you.

Q. What time do you arrive at the warden's house? A. Some officers get there at 6:30, some at ten minutes past six. So it really depends on which officer it is, but we are supposed to be there by 6:30, at the latest.

Q. Then you begin your chores? A. Yes.

Q. How long do you stay at the warden's house? A. To 7:30, and there are many times it is much later, and it depends on how many guests they have, if they have guests.

Q. That is until 7:30 p. m.? A. Yes.

Q. You eat all your meals in a room near that house? A. In a part of the garage. It is a little room attached to the garage where they keeps the cars and the cooking is done for the prisoners that work there.

Q. There is always a guard present when you eat those meals? A. Yes.

(112) Q. What happens when you finish work? A. When I finish work, we go back to the cells.

Q. How does that happen? A. As I said, at times it varies, anywhere from 7:30 on. It could be 8 o'clock, it could be 9. This depends on what is happening up there at that time.

Q. The earliest is 7:30 p. m.? A. Yes.

Q. Up until 9, possibly 9:30? A. Right. If it is just the superintendent and his wife and maybe a member of his family, his daughter or something, 7:30 is the time.

Q. Have they at any point indicated where you will be given your requested assignment doing auto work? A. No.

Q. You are escorted from the warden's house back to your cell by another guard? A. Yes.

Q. And you go through the same process of gates? A. Yes.

Q. At Wallkill did they have any gates of this nature? A. No.

Q. Are you escorted from place to place by a guard? A. Are you referring to Wallkill?

(113) Q. At Wallkill. A. No. You have the freedom to move around at Wallkill.

Q. And you had to report to your job assignment at Wallkill or were you able to do it on your own? A. You do it on your own.

Q. When you went anywhere at Wallkill, you could do it on your own? A. Yes.

Q. You also said you had an interest in music, I believe? A. Yes, that is correct.

Q. Were you able to engage in musical activities at Wallkill? A. Yes, I was.

Q. Can you describe what those were? A. Well, I practiced in the band—I played in the band, and other times when the band wasn't functioning I practiced on my own or with other inmates. We always had leisure time for practice in the afternoon.

Q. You played in a band? A. Yes.

Q. And you were able to practice where? A. Up in the band room.

(114) Q. What hours? A. From after 4 o'clock to 8, I think it was.

Q. After 4 p.m.? A. Yes.

Q. You were able to go on your own to the band room? A. Yes.

Q. And play with other people on your own? A. Yes.

Q. You could also practice by yourself? A. Yes.

Q. What instruments did you play in the band? A. Saxophone and clarinet, but guitar is really my instrument, but due to the fact they needed someone to play saxophone, I played saxophone.

Q. Whose instruments were these? A. The saxophone was the state and the clarinet was mine and the guitar was mine, and I had a base.

Q. Did the band also perform? A. Yes, sir. I was in two shows, one for Christmas and one for Easter. I performed in two shows while I was there.

Q. Were you able to pursue your music in other ways at Wallkill, did you listen to radio and records, for example? A. Yes. I think I had some records that I was able to (115) play from time to time. We had a record room that we could get on a sheet that was passed around every so often to each gallery that you sign up for to go to the record room, plus we had a record player up in the band room where the members of the band could play records on and listen to music.

Q. And this music—did you play in the choir? A. Yes, I sung in the choir.

Q. Did you practice with the choir? A. Yes.

Q. What time would this be? A. Some time in the afternoon and sometimes it would be after 6.

Q. Where did you play in the choir, Mr. Newkirk? A. Up in the chapel.

Q. When? A. Well, like on Sundays, on a Sunday, and I remember one time we did some numbers in the auditorium when we had guests.

Q. Guests that came from outside the prison? A. Yes. We had the gospel train from the five boroughs of New York at one time, which was roughly 50 people, and we was asked to do some numbers at that time in the auditorium.

(116) Q. Is this music very important to you? A. Yes, it is. It is a part of my life.

Q. Were you able to practice regularly at Wallkill? A. Yes.

Q. And play with other persons? A. Yes, that is correct.

Q. When you got to Clinton Prison, what happened to your records, for example? A. My records, I was told they wasn't allowed at Clinton and therefore I would have to give an address where they could be sent or they would be destroyed or give them to a charitable organization or something.

Q. What happened to the records? A. I end up sending them home.

Q. Did you pay for this? A. Yes.

Q. Have you been able to play the clarinet or saxophone at Clinton? A. No, I haven't.

Q. When you get back to your cell at Clinton at 7:30 or after in the evening, are you allowed to play music? A. No. Beginning at 7:30 p.m. it is a silent period until the next morning.

Q. So you can't play any music? (117) A. No.

Q. And you don't play in the band at Clinton? A. There is no band at Clinton.

Q. While at Wallkill had you developed relationships with other members of the band? A. Certainly I had.

Q. These are not available to you at Clinton? A. No.

Q. Talking about the afternoon period, could you indicate at what period in the afternoon you were on your own time at Wallkill? A. It was starting after the count, roughly after 4 o'clock.

Q. Until what period would this last, until what time? A. 11 o'clock at night.

Q. During this period, what could you do? A. Most of my time I spent up in the band room, either that or up in the choir.

Q. What other activities were available during this period? A. Well, you had the gym was always open and, as I stated before, the record room was generally open.

Q. Was that an indoor gym? A. Yes.

(118) Q. Does Clinton have an indoor gym? A. No.

Q. Were you able to decide on your own which of these areas you would go to? A. Yes.

Q. You would go up to them on your own? A. Yes.

Q. Is there any period of the day at Clinton where inmates have a choice as to which area they may go to? A. No, not known to me.

Q. During this period at Wallkill, the doors to your room were open? A. Yes.

Q. In fact, are the doors to your rooms ever locked at Wallkill? A. No.

Q. So you can go in and out of the rooms at your own will? A. Yes.

Q. And you can have guests in your room? A. Yes. I think it is four people that is allowed to visit you at any given time.

Q. During this period from 4 p.m. to 11 p.m., inmates could congregate in each other's rooms? (119) A. Yes.

Q. They could just sit and talk? A. Yes.

Q. Or play checkers or chess or whatever? A. Yes.

Q. At Clinton Prison, are inmates allowed to go into each other's cells? A. No.

Q. And those periods when inmates are in the cells, the doors are locked? A. Yes, that is correct.

Q. Are there places, common places, at Clinton Prison where inmates can sit down and talk to each other? A. The only possible place they could sit down and talk would be in the yard, and then you would have to probably know someone to be able to do this, because due to the fact they have courts there where there are three or four guys on the court where they cook and what not and you can't walk up on somebody's court and want to sit down and start talking but you have to get permission from the individual who has the court to enter.

Q. Since you have been at Clinton have you engaged in informal discussions with groups of inmates? A. I have talked to a few.

(120) Q. Where would this be? A. Several times I have been in the yard and had an opportunity to talk to a few.

Q. Does your job, the hours you work, allow you to go to the yard during the week days? A. No.

Q. When you come back, yard is over? A. Yes.

Q. Do you work seven days a week? A. Yes, I do.

Q. On Saturdays and Sundays, is it a full day? A. On Saturdays and Sundays, sometimes we are able to go into the movie, and then it depends on if something is happening that requests our presense at the house.

Q. It is possible to work full days on Saturdays and Sundays as well? A. Yes, it is possible.

Q. You also mentioned painting. You are able to engage in this activity at Wallkill? A. Yes, I did oil painting there, stone work and also glass work.

Q. What is stone work and glass work? A. Stone work is a form of gravel that you use to make different things, such as faces or animals, you know, trees, (121) the same technique involved as in oil, try to get the same impression, but you use stone to do it.

Q. You made a number of these faces while at Wallkill? A. Yes.

Q. Where did you get the materials for this? A. We had a hobby shop there and we could buy all the materials we needed for these different programs that was involved here as far as art.

Q. Were there other materials available there besides paints? A. There was woodwork, if you wanted to make lamps, they had fixtures you could buy, and there was numerous things you could do there. You had all the equipment for cutting wood if you wanted to do hobby work, woodwork, and the machine was available for you to use to cut the wood after the 4 o'clock count. You could make little chests and pianos and you had the privilege of doing so.

Q. Were you able to do this in your room? A. I never did no woodwork. I did the glass work, and stone work, and painting, and I did that in my room.

Q. You could do that in your room? A. Yes.

Q. Have you been able to do any painting while at Clinton? (122) A. No.

Q. Have you been able to do any stone work or glass work while at Clinton Prison? A. No, I haven't.

Q. You talked about your room a lot. Perhaps you could describe briefly what other things are in your room, what pieces of furniture? A. At Wallkill?

Q. Yes. A. Well, a bed, you had a large cabinet where you could keep your belongings stowed, you had a table there, and you could add other things to make it more comfortable. You had your own little heaters in your room.

Q. In each room? A. Yes.

Q. Were you able to bring in other items of your own? A. Yes, such as lamps and things.

Q. Did you bring in any items? A. Yes, I had a lamp.

Q. At Clinton have you been able to bring any items into your cell besides the furniture they provide? A. No.

Q. Did you have a typewriter in your room? A. Yes, a Royal 440.

(123) Q. Were you able to type in your room? A. Yes.

Q. What did you work on in your room? A. Basic legal work and research work on history and law, some form of law.

Q. When you got to Clinton, what did they tell you about your typewriter? A. I wasn't allowed to have it there.

Q. What did they say had to be done with it? A. I would have to send it home.

Q. How did that happen? A. First I had to fill out a form at the package room. The package room does all the sending out there, shipping and receiving. So I gave them a name and they okayed to send it after they asserted I had money to pay for the postage and it was then packed and sent out by them.

Q. What happened to the typewriter? A. I sent it to my friend and when he got it, it was all brokeup.

Q. Where is the bathroom located at Wallkill? A. At the end of the hall.

Q. At Clinton there is a toilet in your room? A. Yes.

Q. When may you use the bathroom at Wallkill? (124) A. Any time you want to use it.

Q. Is there any limit on the number of showers you may take? A. No.

Q. Are there times that you can use hot water? A. No.

Q. Do you have hot water at your room in Clinton? A. No.

Q. How do you get hot water in Clinton? A. There is only one way you can get it, and that is in between your afternoon meal at the time you go to the mess hall, you bring out your pail and leave it by the front and they have a man to fill up the pail during the time you are in the mess hall.

Q. Where is the pail left? A. As you come back, going into your respective gallery, you pick up your pail and take it back to your cell with you.

Q. That is the only time during the day you get hot water? A. Yes.

Q. How many showers a week do you get? A. One shower.

Q. Is there an outside wall at Wallkill? (125) A. Yes.

Q. At Wallkill? A. Excuse me, I am sorry. No, there is no wall at Wallkill.

Q. Is there a wall at Clinton? A. Yes.

Q. Can you see over the wall? A. The only thing you can see is the sky and possibly the tops of some houses.

Q. At Clinton you don't see anything that is outside the prison except the sky? A. Yes.

Q. What is the situation at Wallkill? A. You can see all your surroundings there, because it is all open.

Q. What kinds of things can you see? A. Houses, the land, the woods, this type of thing, a few roads.

Q. How does this affect you? A. Well, to me, this gives you more of a freedom of feeling as towards like being outside. This keeps you more in contact with the outside reality, society.

Q. At Wallkill do you also see people not from the prison, from the outside? (126) A. Yes.

Q. What types of people might come to Wallkill from the outside? A. Well, you would see visitors, people that is coming in to visit the institution. There is time to time you have the high school kids coming in there. They come in quite frequently, visit the institution.

Q. Did you yourself receive visits while at Wallkill? A. Yes.

Q. From whom? A. I received visits from my sister, two of my sisters, my son and my friend.

Q. Where do these people live? A. Brooklyn. My sister live in New York and my friend live in Coram, Long Island.

Q. Were you able to make phone calls while at Wallkill? A. Yes.

Q. How often was that? A. Once every two weeks.

Q. Who did you call? A. I called my mother-in-law down South, North Carolina. I called her. My sister. And my friend was on my phone list.

(127) Q. How often did you receive visits, approximately, while you were at Wallkill? A. About once a month.

Q. Have you received any visits since you have been to Clinton? A. No, I haven't.

Q. Have you been able to make any phone calls since you have been to Clinton? A. No.

Q. Have you had any contact with anybody except prisoners and other inmates while you have been at Clinton? A. No.

Q. How has this affected you? A. This is a very depressing situation. I have been in prison ever since I have been there, because I have had a lot of difficulty in my writing and trying to communicate with my family through writing. I find there is an arrears in writing due to the fact that the people that did my correspondence at Wallkill—at Clinton most of the letters came back saying the people was not on the correspondence list and I had to go through the procedures to get them on the correspondence and I asked why they have not because they were on the list in all the other institutions I was in, and this took time, going through (128) these procedures, to get them to decide whether they was going to put them on there. I even brought up the fact that I felt that due to the fact that I had correspondence with these people prior to coming to Clinton, that the same records should be available there and I would be allowed to communicate with these same people, due to the fact they have been checked, and on most occasions I had to go to the service unit to get this straightened out. At one point it got so bad I had to take it up with the superintendent to get my daughter on the list, my oldest daughter, who is 14.

Q. Would you say that the general facilities and atmosphere at Clinton is similar to the other maximum security institutions you have been in? A. It is similar, yes.

Q. Is it similar to the general facilities and atmosphere at Wallkill? A. No. There is a lot of difference between Wallkill and Clinton.

Q. How do these differences, from your observations, affect the people at Wallkill and the people at Clinton, the inmates.

> Mr. Hoffman: Your Honor, I object to that question. That is testifying to the state of mind of other people.
>
> (129) The Court: I will ask counsel to rephrase the question. The objection is sustained. The question should be put to the witness in a more acceptable form.

Q. How was the relationships you had with the correctional officials at Wallkill? A. I would say I had a good relationship with the officials there. I never had any trouble with anyone. I aways got along.

Q. And you were able to freely talk with these men? A. Yes, that is correct, at any given time.

Q. Was there tension between you and these persons at Wallkill? A. There wasn't any tension between me and the officials there.

Q. How does this compare to the relationship between the guards at Clinton? A. At Clinton it is a whole different thing. You didn't have that much relationship with officers there. You are herded up and rushed around to the places you are going and the officers have nothing to say to you. You are just notified you are going to a certain area about something and you are carried there by an officer. The only one you come in contact with would be the individuals that you work under, such as the supervisor, which could be a civilian or (130) an officer.

Q. You would say the basic relationship between the inmates at Clinton is where the guard is escorting and watching inmates when they go from one place to another? A. Yes.

Q. And this is not the case at Wallkill? A. No.

Q. Did you have any disciplinary difficulties at Wallkill? A. No.

Q. Were you ever spoken to by any of the officials at Wallkill about your behavior? A. No.

Q. Were you ever counselled or warned by anyone? A. No.

Q. You were participating fully in the activities at Wallkill? A. Yes.

Q. Did you plan to stay at Wallkill—you were hoping to stay at Wallkill? A. Yes, I had hoped to stay at Wallkill.

Q. When did you first hear about the concept of an inmate's labor union? A. Somewhere around the last of May.

> (131) The Court: Of this year, 1972?
>
> The Witness: Yes, that is correct?

Q. Prior to this had you had any general knowledge about inmates' labor unions at any of the prisons? A. Yes. I had read it in numerous papers, Time Magazine, or the Times paper, one, or perhaps the Daily News.

Q. What did you read? A. I read about the organization over there at Green Haven, the labor union situation there.

Q. And what did you know about it? A. I knew they had one there in progress, that they had a petition passed and it had been signed by certain of the inmates and it was being taken up outside—with outside labor people who was handling the situation.

Q. The first time you heard about it at Wallkill was the end of May? A. Yes.

Q. Could you describe how that came about? A. Well, at the time I heard up there, this Martin came to me with the labor union form and he showed it to me and asked me did I think I would be interested in signing for the labor union to be at Wallkill.

Q. Who was this? A. Martin Sostre. So I took it and read it and after (132) reading it, I told him I did think it was beneficial.

Q. I show you Plaintiffs' Exhibit 15 and ask you if you have seen that before? A. Yes, I saw this before.

Q. I show you page 3. Is that your signature? A. Yes, it is, that is correct.

Q. Was this the form that you were speaking about that Mr. Sostre showed you? A. Yes.

Q. Is that your name on the 7th line of that form? A. Yes.

Q. And you believe you signed it in that date that is next to your name? A. Yes.

Mr. Pochoda: There are 9 other names on this form, your Honor, and I would like to read it for the record: Martin Sostre, 9273, date, 5/31/72; Charles Kenny, No. 9372, 5/31/72; Claudio Arzuaga, No. 9971, 5/31/72, Allen S. Weinfeld, 9586, 5/31/72, Cornelius Lucas, 9659, 5/31/72, Coy Smith, 9848, 5/31/72; Edwardo Rosado, 9748, 5/31/72; J.J. Newkirk, 9704, 5/31/72; Michael Williams, 9723, 6/1/72.

This document is the constitution of the prisoners labor union at Wallkill and begins, "The undersigned, (133) desiring peacefully, lawfully and effectively to air just grievances and present legitimate demands to the prison administration, the legislatures of this state and of the United States, and the public at large hereby form the prisoners' labor union at Wallkill with the following constitution." And I will read one section:

"2. General Principles and Purposes. Believing that prisons are not islands of exile, but an integral part of this society; believing that prisoners are human beings and retain their human rights and social responsibilities, and believing that prison labor is part of labor in general and consequently part of the general economy, the union has the following purposes: To seek through peaceful and lawful means, A, to improve the conditions of its members; B, to equalize to the fullest extent possible the rights, privileges, and protection of prison labor with those of free labor everywhere; C, to advance the economic, political, social and cultural interests of the prisoners at Wallkill; D, to aid in adoption of laws and to ask your compliance with existing laws, local, national and international, for the economic, political and social welfare of all prisoners, and, E, to do anything and act incidental to or connected with the following purpose."

(134) Q. On that date did you sign any other documents? A. No.

Q. Did you think that the inmate union idea was a good one? A. Yes, I did.

Q. Did you think it might help your conditions while in prison? A. Definitely I feel it would help the conditions, to make more money. Everyone needs more money.

Q. What was your wage per day while at Wallkill? A. My first wage was 25 cents per day.

Q. And then? A. When I reached the point of driving a truck, it then became 55 cents a day.

Q. After this discussion with Mr. Sostre, when was the next time you spoke to anyone at Wallkill about a union at Wallkill? A. I think the next time I said anything to anyone was on June 2nd.

Q. And when was that? A. I was approached by Martin Sostre somewhere around my cell area—I don't recall if it was in my cell or outside the cell—

Q. Do you recall approximately what time this was? (135) A. I believe it was in the afternoon.

Q. After 4? A. I would say after 4.

Q. What was said at that time? A. At that time he told me—he showed me the forms for the petition for signature and he asked me would I sign and pass it on to someone else.

Q. What did you say? A. I told him I would.

Q. What did you do? A. I didn't sign it then. I put it in my cell and then I went on to band practice and after I came back from band practice, which was around the 6 o'clock count, while I was in the cell for the count, I signed it and then I passed it on.

Q. Do you recall who you gave it to? A. No.

Q. After you passed it on, do you know what happened to it? A. Well, I passed it on and told the last one to give it back to Martin Sostre.

Q. After you passed it on, was that the last time you physically handled that petition? A. Yes, sir.

(136) Q. What did you do then, after you signed it? A. After I signed it, I went back to the band room.

Q. And did what? A. Practiced music.

Q. When you had passed this petition on to the next person, did you mention the Liaison Committee? A. No, I didn't, at no time.

Q. Was there any argument of any sort involved when you passed this petition onto the next person? A. No, sir.

Q. Did you attempt to hide this passing of the form on? A. No, I didn't.

Q. This was done out in the open? A. Yes.

Q. After you went to the band room, what did you do? A. Well, you come back down for the 8 o'clock count, I think it is, and after that I don't recall what I did. I don't know if I watched television or went somewhere in the institution.

Q. At some point did you hear an announcement over the PA system? A. Later I did hear an announcement. I was up on the third floor watching television.

(137) Q. What did you hear? A. I heard Barnes on the PA system, which when I heard it I didn't recognize his voice, but I hear someone say it was him.

Q. Who was that? A. Barnes.

Q. Who was he? A. A member of the Liaison Committee. Exactly what position he held, I don't know.

Q. He is an inmate? A. Yes.

Q. What did you hear? A. I heard him say that the Liaison Committee had not sanctioned the labor union petition, they had no part of it and anyone who wished to discuss it with the Liaison Committee could meet at the key room.

Q. What was your reaction to that? A. I was surprised because I had never known of any inmate to be on the PA system. This is what surprised me most.

Q. What did you do after hearing this announcement? A. I continued watching the TV.

Q. Were you concerned about the announcement? A. Yes, it concerned me.

(138) Q. In what way? A. Well, I felt that maybe some people would feel bad, but me personally it didn't make me feel bad about it.

Q. You were not worried? A. No.

Q. What did you do for the rest of the night? A. After I finished watching TV, I went back to my cell.

Q. Did you have further discussion during that night or any discussions with people about an inmates' labor union? A. No.

Q. Did you get involved in any arguments of any sort? A. No, I didn't.

Q. Or fights of any sort? A. No, I wasn't in any fights.

Q. Did you feel threatened in any way? A. No.

Q. Did you threaten anybody else in any way? A. No, I didn't.

Q. Were you spoken to by an officer at any time during that evening? A. No, I wasn't.

(139) Q. On Saturday, the next day, were you involved with the union authorization form at all? A. What day would that be?

Q. The next day, Saturday. A. No, I didn't have no contact with that.

Q. On any day between that Saturday, June 3rd, until you were transferred were you involved or did you even handle at all one of the union authorization forms? A. No.

Q. What were you doing on Saturday, June 3rd? A. I think, if my recollection serves me correctly, I think I was working on Saturday.

Q. Were you performing your usual job? A. Well, once out of every month the truck drivers has a turn at moving the garbage from the institution, which consists of Saturday and Sunday, and I think I was doing that on that particular day.

Q. For the rest of the week, what were you doing? A. Driving a truck.

Q. Again you would drive in and out of the institution? A. Yes.

Q. And at times there would be no guard present? A. That's right.

Q. Was your routine changed in any way during (140) that week as opposed to the week prior to June 2nd? A. No.

Q. Did a corrections officer or any official at Wallkill speak to you before the union authorization form or the union at Wallkill? A. No.

Q. Did you get into any arguments with any other inmates about the union at Wallkill? A. No, I didn't.

Q. Did you get into any arguments about the Liaison Committee at Wallkill? A. No.

Q. Did you feel threatened in any way while you were there? A. No.

Q. Did you yourself threaten anybody? A. No.

Q. Did you have even any heated discussions with anyone on the Liaison Committee? A. No.

Q. Or with any other inmates? A. No.

Q. During that week were you also going about your usual routine after 4 p.m.? (141) A. Yes.

Q. You were going to band practice? A. Yes.

Q. And choir practice? A. Yes.

Q. And painting? A. Yes.

Q. And typing? A. Yes.

Q. And your room remained unlocked? A. That is correct.

Q. You were not brought up on any disciplinary charges? A. No, I wasn't.

Q. At some point, I take it, this routine was interrupted. Could you describe when this happened? A. That was June 8th.

Q. What happened? A. On the morning of June 8th, I had started my usual procedure in driving and I had picked up a group of inmates and their supervisor and I was to deliver them, at which time we had stopped at the carpenter shop to pick up a tool they was taking with them for their work and just as I was ready to proceed on into the trip, I was called over the loudspeaker to come in, that I was wanted at the platform.

(142) So I pulled the truck in close to the platform

and stopped and got out and proceeded in to find out what it was they wanted, and at that time I was informed by the officer that I worked for that I was wanted at the hospital.

I told him okay and asked him "Do you want to move the truck?"

And he said, "No, somebody else will move it. You don't have to worry about that."

I gave him the keys and left the truck and proceeded to the hospital.

Just as I was maybe ten or fifteen feet away I noticed two officers was trailing me. So I continued on to the hospital.

At one point I asked them what was happening and they just said I was wanted at the hospital. So I went on to the hospital and when I got there I was taken into a small room, where I found one other inmate sitting there. I was asked to sit down.

I sat down and perhaps waited for maybe a half hour and then I saw my personal belongings being brought to this room by these same officers that had brought me up there.

So I inquired why was my belongings being put up and they said I was on the draft.

Q. What does that mean? (143) A. That means being transferred.

Q. Did they tell you why? A. No.

Q. Did they tell you where you were going? A. No.

Q. Then what happened? A. Well, I just finished packing up and sat there and waited until they got ready to leave.

Q. Did you have a visit that day? A. I am told by my sister that she arrived there shortly after we left that morning, Mary Maulsby.

Q. And you were not able to see her? A. No.

Q. Where were you taken? A. To Clinton Correctional Facility.

Q. How do you feel about this action? A. I feel deeply depressed because I have been deprived of quite a few things I had access to there, including visits from my family, the freedom that you have there to move around and the functioning under a different situation.

The whole circumstance is much different because there is more freedom involved. The environment there creates the move for the people there—by being free (144) to move it keeps the people a more happy inner feeling there and in this respect I felt better there than I would feel up here, in Clinton, because there is a deeply depressed situation.

Q. Do you know why you were transferred? A. No, I never did find out why I was transferred.

Q. Can you think of any activity you did at Wallkill that would call for a transfer? A. No.

Q. You spoke about June 2nd and you said you were given a form and passed it on to another inmate. I ask you to look at this particular paper, Plaintiffs' Exhibit 4 in evidence (handing). A. Yes, this is a copy similar to the one I saw.

Q. And you put your name on there? A. I signed it.

Q. And then passed it on? A. Yes.

Q. If you had known about a rule that prohibited the passing of any forms, would you have done so?

> Mr. Hoffman: Your Honor, I object. That is a speculative question.
>
> The Court: Sustained.
>
> Mr. Pochoda: No further questions, your Honor.
>
> (145) The Court: Mr. Hoffman.

Cross Examination by Mr. Hoffman:

Q. You were transferred from Sing Sing to Attica? A. Yes.

Q. Was it easier or more difficult for your family to visit you when you were transferred from Sing Sing to Attica? A. When I was in Attica, I didn't get any visits.

Q. And then you were subsequently transferred from Attica to Green Haven? A. Yes.

Q. Was it easier or more difficult to receive visits at Green Haven than it was at Attica? A. Green Haven is where I received the visits. I didn't receive any at Attica at all.

Q. You were subsequently transferred from Green Haven to Auburn, is that correct? A. Yes.

Q. Was it easier or more difficult to receive visits at Auburn than it was at Green Haven? A. It was more difficult, because I only received one visit while in Attica, and that was from my friend.

Q. Was it also more difficult to receive visits at (146) Auburn? A. Yes, it was difficult there. That is the place I received the one visit at.

Q. Did you protest your transfer from Green Haven to Auburn? A. No, I didn't, because, the reason I didn't, was because I wanted to become involved in something related to my life's activity outside. So in order to get to Wallkill, this seemed like to be the main route, to go by Auburn and start working from there and do a couple of years or so and then work my way back to Wallkill.

So to be able to help me in society, I accepted going to Auburn knowing that I wouldn't be able to get visits there.

Q. So that your transfer to Auburn was in part due to your own request? A. Yes.

Q. Were you deeply depressed when you arrived at Auburn? A. No.

Q. Were you deeply depressed about not being able to receive visits at Auburn? A. Well, I had the feeling I wouldn't receive that many visits at Auburn.

(147) Q. Vhat type of work did you do with the body shop? A. epair cars that had been damaged.

Q. Did yu enjoy this work? A. Yes, I enjoy doing this type owork.

Q. Were ou compensated for this work? A. 10 cents a day, I thk it was.

Q. When ou were first transferred to Wallkill, what was your st assignment at Wallkill? A. My first assignment the was porter.

Q. A por? A. Yes.

Q. And er your assignment as a porter, what was your next signment? A. My next assignment was to haul garbag work on the garbage truck—not to drive it but to workn it.

Q. Were u also not assigned to the rear gate at Wallkill? A. I as assigned to the rear gate at the time I was on the rbage truck.

Q. What lucational courses were you taking at Auburn? A. th, English, science.

Q. What ucational courses were you taking at Wallkill? A. I k the same thing there, English, math and (148) scienc

The ourt: Mr. Hoffman, my notes reflect that Mr. wkirk went from Sing Sing to Attica, and I note you have been questioning him on Auburn and I nt to follow this through, so that I am clear. I have t at Sing Sing to Attica to Green Haven.

Mr. offman: That is correct, your Honor. Then Green aven to Auburn and then Auburn to Wallkill.

The ourt: Thank you.

Q. So that ou were receiving educational courses both at Auburn a Wallkill? A. Yes.

Q. Have you requested any educational courses at Clinton? A. No, I haven't. I requested the automotive field and the driving.

Q. That is the only thing you have requested so far? A. Yes.

Q. Has anyone forced you to work in the superintendent's house? A. I was only asked would I work there and I am not one for turning down a job, due to the fact that I was asked.

Q. Are you compensated for working there? A. Yes.

(149) Q. Where is the superintendent's house located? Is it outside the walls? A. Yes, it is.

Q. How many days per week do you go there? A. 7.

Q. You testified before that when you're within Clinton Prison all you can see is the sky. Is this true when you go to the superintendent's house? A. Well, you can see your surroundings there, the houses there, such as there is.

> The Court: Perhaps this is a good time for us to take our mid-afternoon break. I can tell counsel that we will resume again at 3:30, which is in about ten minutes, and we will continue until 4:30.
>
> (Recess.)

By Mr. Hoffman:

Q. Mr. Newkirk, as you walked down the road from the prison to the superintendent's house, what are you able to observe? A. Walk down the road? I never said anything about walking down the road. You go by car.

Q. What are you able to observe as you make the trip? A. You see a few houses, officials' houses along the roadway.

(150) Q. When you work at the superintendent's house do you work only inside the house? A. I work inside and there are times I would be doing something outside, such as times I have to pack his car or camper, bring materials from the inside of the house to the outside.

Q. Are there other occasions when you work outside the house? A. That's just about it.

Q. How many men work at the superintendent's house? A. At this time there is only three.

Q. Do you men have occasion to go into town? A. Go into town? No.

> The Court: May I inquire: Where is the superintendent's house? Is it on the prison grounds in some way or is it in toward the town?

A. I am not certain about this, but I think it is part of the prison property, because it is just a little ways up from the wall. There are numerous houses as you go alongside this road we take going up there. So I think this is part of the state property there.

> The Court: But it is beyond the main wall of the prison?
>
> The Witness: Yes.

(151) By Mr. Hoffman:

Q. Do people from the outside visit the superintendent's house? A. Yes, there be people there from time to time.

Q. Upon occasion have you spoken to them or have they spoken to you? A. They says, come in—it is a general thing, they speak to people.

Q. You are permitted to have conversations with people who come into the superintendent's house? A. Most of the time there is no conversation. If he is having guests for lunch and dinner, all I do is wait on them and serve them.

Q. Have you renewed your request to do auto work at Clinton? A. No, I haven't.

Q. When was your request made? A. It was made in June.

Q. And you have made no further requests since that time? A. No, because I was told at that time, it was like a long, drawn out affair waiting and it took time to get around to it. So I assume that I am still on the waiting list.

Q. How much are you compensated for working at the (152) superintendent's house? A. I started off with 30 cents and after being there approximately two months, I was moved to 55 cents.

Q. When you were a hall porter at Wallkill, how much were you compensated? A. 25 cents.

Q. Have you requested the superintendent at Clinton to allow you to make any phone calls? A. Yes, I put down for the phone call—they passed out the sheets and I came in one night and there was a sheet in my cell and I filled it out and put down the name of the people I called prior to coming there, and I have not heard anything since then.

Q. Have you put in a tab to the superintendent on that? A. Yes. As a matter of fact, the form came back to me stating I had to put the phone numbers on it, and I sent a request back stating that I didn't have the phone number and I had been on a phone list prior to coming there and perhaps the phone numbers would be on there.

Q. Have you made efforts to obtain these phone numbers from your relatives? A. I have wrote a couple of them.

Q. Have you attempted to establish any friendships at Clinton? (153) A. I know a few people there that I have met down through the years, from one institution or another, you know.

Q. Are you friendly with the men you work with every day? A. Yes, I get along with the people I work with.

Q. When you were transferred to Clinton, were you ever put in segregation? A. I was put in idle.

Q. But you were not put in segregation? A. I know segregation is a part that is set off, but I don't know the exact aspects of segregation in the term that the institution use it in.

Q. I am referring to the special housing unit at Clinton. Were you ever put in that special housing unit? A. No.

Q. Have you lost any good behavior time as a result of your transfer? A. No.

Q. Have you asked the superintendent at Clinton for permission to play your musical instruments? A. There is no place—I asked for the band, but the fact is there is no band. Just as I was leaving, there might be a band for Christmas, and this is not certain. I have put in for this here.

(154) Q. Have you requested permission to keep an instrument in your cell? A. I have my clarinet in my cell, but at the time I arrive at night it is too late to play it.

Q. Are you able to play it on the weekend? A. No. I be up there on the weekend.

Q. If you return early from the superintendent's house, are you able to play? A. If I should arrive before 7:30, I have a few minutes to play it.

Q. When you were at Wallkill, did anyone other than Martin Sostre come to speak to you about the union activity? A. No, they didn't.

Q. Would it be correct to say that Martin Sostre was one of the leaders of the union activities? A. I could only say he is the one presented it to me.

Q. Do you know whether he presented it to the inmates? A. No, I don't.

Q. Do you know whether he presented it to Mr. Lucas? A. No, I don't know that.

Q. Did you discuss the union petition with any other inmates? (155) A. No.

Q. Who was the inmate that you passed the petition to after you signed it? A. I don't recall the exact name of the person that I passed it to.

Q. But on June 2nd, when the union petition was being circulated, you did not discuss this with any other inmates? A. The individual I passed it to, we exchanged a couple of words about it. He asked me what it was about and I told him it was a petition of trying to get a union at Wallkill.

Q. But you did not discuss it with any other inmate? A. No.

Q. Did you hear Mr. Barnes speak on the loudspeaker? A. Yes.

Q. And you did not discuss that with any other inmate? A. No, I haven't discussed it.

Q. And in the days after June 2nd, did you have any discussions with any other inmates about the union activity? A. No.

Q. Do you know which inmates were the members of the inmate Liaison Committee? A. I don't know them all by name. I know a few of (156) them.

Q. Can you name the ones you know? A. I know Barnes, Henry Best, James Brown, and there was other ones, at least two more I knew by face but not their names.

Q. What was the race of these men? A. The ones I just named, the three, was all black.

Q. How did they come to be members of the inmate Liaison Committee? A. Well, they had a vote ballot there and they was voted in.

Q. Voted by the population? A. Yes.

Q. Was Martin Sostre friendly with Warren Barnes? A. That I couldn't answer. I don't know.

Q. Do you know anything about their relationship at all? A. No.

Q. Were you friendly with Martin Sostre? A. We spoke from time to time, such as many others.

Q. But you have no knowledge of his relationship with Warren Barnes? A. No, I don't, because a large portion of the time I was there he was in court.

(157) Q. Did there ever come a time when you were working as a truck driver at Wallkill when you encouraged inmates involved in a crucial project not to work for low wages? A. I have never encouraged anyone to do anything.

Q. When the union petition was being passed around on June 2nd, did any officer confiscate it? A. I heard by hearsay it was confiscated.

Q. To your direct knowledge— A. I have no direct knowledge as to one being confiscated.

Q. Did any officer reprimand you for circulating this petition? A. No officer said anything to me.

Q. Did any officer bring charges against you for circulating this petition? A. If so, it is not known to me.

Q. You testified before that you had certain problems with correspondence at Clinton Pison.

Have those difficulties been straightened out? A. Yes, they is pretty well straightened out now.

Mr. Hoffman: No further questions.

Redirect Examination by Mr. Pochoda:

Q. You requested the transfer to Auburn, Mr. Newkirk? (158) A. Yes.

Q. And you did so because you felt that was the only way to get to Wallkill? A. Yes.

Q. Did you request the transfer to Clinton? A. No, I didn't.

Q. And you wanted to stay at Wallkill? A. Yes, that is correct.

Q. You talked about the jobs you first had when you arrived at Wallkill. Later on you became a truck driver? A. Yes.

Q. And this was a job you enjoyed doing? A. Yes.

Q. And had done on the outside? A. Yes. I drove professionally on the outside.

Q. And prior to that you worked in the automotive vocational shop? A. Yes.

Q. When you left Wallkill you were engaged in activities you enjoyed doing?

> Mr. Hoffman: I object to that as a leading question, your Honor.
>
> The Court: It is redirect and I think I will allow it here.

(159) A. Yes, I did.

Q. And you had to wait for a period at Wallkill until you were able to engage in those particular activities? A. Yes.

Q. As you were in the middle of those activities, then you were transferred? A. Yes.

Q. At Clinton Prison, you stated, in answer to a question by Mr. Hoffman, that you see some people from the outside at the warden's house. A. Yes.

Q. When you see those people, you serve them? A. Yes.

Q. You wait on them at tables? A. Yes.

Q. And you might take their coats or turn down their beds? A. Yes.

Q. And that is the relationship you have at Clinton Prison with people from the outside? A. Yes.

Q. And when you were at Wallkill, did you wait on anybody or serve anybody from the outside? A. No.

(160) Q. Did you see people from the outside whom you didn't have to wait on or serve at Wallkill? A. Yes, I did.

Q. This job that you have at Clinton Prison is approximately 13 or 14 hours a day? A. Yes.

Q. Are you busy for most of those hours? A. Yes.

Q. How do you feel when you get back to your room at night? A. Very exhausted.

Q. What do you generally do? A. Go to bed.

Q. And you get up at 6 a.m. and begin the process over again? A. Yes.

Q. At Clinton have you been able to or is there any way to play music with other people? A. No.

Q. Is this important to a musician? A. Yes, it is very important. This is one of the most important aspects of music, being able to play together with other people, being able to communicate musicwise with other musicians.

(161) Q. Do you hope to continue playing music when you leave prison? A. Yes. I hope to get into it professionally.

Q. Do you feel competent to do so? A. Yes.

Q. Do you also write and arrange music? A. Yes, I do.

Q. Turning back to Wallkill again, prior to your transfer had you spoken to any lawyers about the union? A. No, I had not spoken to any lawyers.

Q. You did not receive a visit from any lawyers about the possible union at Wallkill? A. No.

Q. Did you correspond with any lawyers about a possible union at Wallkill? A. No.

Q. The forms that we talked about that you signed on June 2nd, did you have any idea of what these forms were and where they were headed? A. I knew they was union forms.

Q. Do you know what was going to be done with them? A. Yes, I knew they was going to be sent out.

> Mr. Pochoda: No further questions.

(162) Recross Examination by Mr. Hoffman:

Q. You testified before that you work all day at the superintendent's house. What is the first thing that you work on in the morning? A. When I first arrive there, between the time of 6 and 6:30—it varies depending on what officer is taking us up there—the first thing I do is go into the little room we have there in the back of the garage and perhaps I might change my coat and might not and just as soon as the officer gets opened up and straightened out there, he open the house up, and then I proceed on to the house and the first thing I do is start doing the dusting work and things of that nature.

If there was any dirty dishes that have been left over during the night after I have left, I have to clean these up and see the kitchen is properly cleaned up before anyone gets up.

The next thing to do is unload the dishwasher, put the dishes away that was clean over the night, and then I proceed on with the other parts of the housecleaning in the areas where no one is sleeping in at that time.

Q. Approximately how many hours does the cleaning take? A. This is a day's process. You can be going in and (163) out all day doing this.

Q. Is it your testimony that you are working each and every minute of the day when you are at the house? A. I didn't say that.

Q. How much time do you have to relax? A. Sometimes I come out and I might have 15 or 20 minutes before I am called back for something. I might come out and have five minutes.

Q. Do you ever have a longer period than that? A. I would say there have been times perhaps that he was not there that I might have had 45 minutes or even maybe a little longer.

Q. Have you asked to be reassigned from the superintendent's house? A. No, but I didn't want to really disturb the situation due to the fact that I had already put

down for these other two trades and I was hoping for those to come through.

Mr. Hoffman: No further questions.

Redirect Examination by Mr. Pochoda:

Q. Were you hoping at Clinton to get into the automotive field? A. Yes.

Q. Do you feel that if you antagonize the superintend-(164) ent this might make it harder to get into that field? A. I feel there is a very good possibility that it would.

Q. Has your record been clean at Clinton? A. Yes.

Q. Have you had any disciplinary problems whatsoever? A. No.

Q. You are still waiting to do this automotive work? A. Yes.

The Court: Mrs. Walker, I would ask you the same question I had asked previously, as to whether you have any inquiry you want to put to the witness?

Mrs. Walker: I have no questions, your Honor.

The Court: I have one or two, if I may.

Examination by the Court:

Q. During your direct examination, Mr. Newkirk, you were asked some question by counsel as to whether you had been involved in any fights relative to this union matter, and I noted down as part of your answer the following:

"I didn't get in any of the fights."

Were there any fights which you were aware of which followed the passing of a union petitiion, even though you may not have been involved in them yourself? (165) A. No, there wasn't no fights.

Q. Am I correct that when you heard about the announcement on the loudspeaker that there was to be a meeting or persons who were interested could come to a meeting at the key room, you did not go to that meeting? A. No, I didn't.

Q. On cross examination you were asked some questions relative to good behavior time.

As far as you know, has any good behavior time been taken away from you as a result of anything that happened in June of 1972? A. Not to my knowledge.

Q. Since you arrived at Clinton, have you, so far as you know, been earning good behavior time? A. As far as I know.

Q. As far as you know, is it customary when a person reports to a new institution that he be assigned for some initial period to the idle company? A. Most institutions I have been in, right after you first go there you go down and find out what you want to do while you are there.

Q. You had not been at Clinton before you arrived there on June 8th? A. No, I haven't.

(166) Q. Were you interviewed immediately or very shortly after you arrived at the prison on June 8th? A. I think about four or five days I was called and asked why was I transferred up there.

Q. What did you say when you were asked that question? If you remember. A. I told them I didn't know, that I was seeking to find out why I was transferred there.

Q. Did anyone at Clinton tell you? A. No. They said they didn't know the reason for my being transferred.

Q. Did there come a time when you did find out the reason you were transferred from Wallkill to Clinton? A. No, there was no one there could inform me as to why I was transferred.

Q. So that even today, sitting here in this courtroom, you are not certain of the reason why you were transferred on June 8, 1972, from Wallkill to Clinton, Mr. Newkirk? A. No official has ever informed me as to why I was transferred.

The Court: I have no further questions of Mr. Newkirk.

(167) Re-cross Examination by Mr. Hoffman:

Q. When you were transferred from Sing Sing to Attica, did any official inform you of the reason for that transfer? A. Not that I recall. I didn't know I was going—

Q. When you were transferred from Attica to Green Haven, did any official inform you of the reason you were being transferred? A. I requested the transfer from Attica.

Q. To Green Haven? A. Yes.

Mr. Hoffman: No further questions.
Mr. Pochoda: No further questions.
The Court: You may step down, Mr. Newkirk.
(Witness excused.)

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Testimony at Trial of Petitioner Harold N. Butler [Trial Minutes, pp. 450-608].

(450) Harold N. Butler, a defendant herein, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Hoffman:

Q. What is your present position, Mr. Butler? A. I am the superintendent of the Wallkill Correctional Facility.

Q. Would you tell the court briefly what your experience has been on the institutional level in the Department of Corrections?

> The Court: May I inject one question? Were you the superintendent at the Wallkill Facility in May and June of 1972?
>
> The Witness: I was.

A. I was appointed as a prison guard to the New York State Department of Correction in the fall of (451) 1936. I attended the First Central Guard School at Wallkill Prison and was assigned to the institution for male defective delinquents in Napanoch in the spring of 1937. I continued to work there until 1943 when I joined the military service, and remained in the military service until 1946, when I returned to Napanoch.

In 1952 I was appointed as a sergeant at Wallkill Prison, and I remained there until 1956, when I went back to Napanoch as a lieutenant.

I then went to the New York State Vocational Institution as a lieutenant, back to Wallkill, and then I was appointed as an assistant deputy superintendent at the New York State Vocational Institution in, I believe, 1963, and I was appointed as deputy superintendent, at that time deputy warden, of the Green Haven Correctional Facility in 1965.

That same year I was appointed as deputy commissioner in the Albany office, and I served there until 1971, in charge of personnel, and I also acted as a trouble-shooter for the department in the event there were any difficulties in any one of the facilities, and this occurred on perhaps eight or ten occasions when I was required to visit various facilities where riots were considered or there were sitdown strikes, or whatever (452) problem, I think similar to the Auburn riot in 1970, and I handled the Auburn riot without any loss of life or any serious injuries to any persons.

I also, after being appointed as superintendent at Wallkill—I was asked by the commissioner to assume the role of deputy commissioner again in the fall of 1971 and to return to Elmira because they felt that this institution was going to erupt into rebellion, and I was there for five months and brought the institution back to a normal climate and then returned to Wallkill.

Q. In your past experience on the institutional level have you acted as a disciplinary officer? A. Yes, I have.

Q. Would you tell the court very briefly in what capacity you acted as a disciplinary officer? A. I was the disciplinary officer in Green Haven when at that time it was known as the PK's Court and I was deputy superintendent there.

When I was assigned to Napanoch we were perhaps one of the first institutions that had an adjustment committee and I served on that committee for several years.

Q. How long have you been at Wallkill Correctional Facility? (453) A. As a superintendent?

Q. Yes. A. Approximately a year and a half.

Q. Would you tell the court something about the physical layout of Wallkill? A. It's a medium security institution by most penology standards. There are no locked doors. All cells are left open 24 hours a day. There is a perimeter wire fence around a portion of the facility, not the entire facility.

The institution is completely open until 11 o'clock at night, when the inmates may move about as they will.

It has an extensive academic and vocational training program. It has many innovative programs that other institutions perhaps don't have. It permits a great deal more freedom than most facilities permit because we have selected persons there. Inmates are not sent there, with the exception of the Elmira Reception Center people. All the rest are selected by a staff which visits the facilities.

Q. Do you have a special housing unit at Wallkill? A. No, we do not.

(454) Q. Do you have wings at Wallkill that can be isolated? A. No, we do not.

Q. Will you tell the court how an inmate gets to Wallkill Correctional Facility? A. The inmate usually sends a letter to the commissioner, to myself, or he visits the counselor in the institution where he is housed and indicates an interest in coming to Wallkill. At the time that our people visit that facility for the purpose of interviewing we interview the inmate, review his record, and the men are selected by this committee, and we in turn submit their names to Albany with a recommendation. Albany then usually, with some exceptions, accepts our recommendations and the men are transferred to Wallkill.

Q. Can an inmate earn the right to come to Walkill in the sense that an inmate earns good time credits? A. No.

Q. Can you refuse to accept an inmate at Wallkill? A. Yes.

Q. Will you tell the court how you deal with disciplinary problems at Wallkill? (455) A. Well, we usually have most of our problems—most of the problems, thankfully, are minor because of the population we have there, but they are usually handled by forfeiting some privilege, perhaps a voluntary cell confinement. The door is never locked and he agrees to remain in his cell during the open hours of the facility.

This is usually successful and is usually all we have to do.

Q. Is it possible at Wallkill to segregate inmates who have hostilities toward each other? A. No.

Q. How do you deal with this problem at Wallkill? A. If we have a very serious hostility or persons who we feel might injure one another, we recommend transfer to another facility.

Q. How would you deal with this problem at a maximum security prison? A. We probably would place them either in punitive housing, in a special housing block, or possibly in administrative housing, for their own protection.

Q. Would you contrast for the court the problems in controlling the security of Wallkill in comparison to controlling security at a maximum security prison? (456) A. Well, first of all, our inmates are permitted to move about the facility at all times without any supervision, without any escorts, and this occurs throughout—until 11 o'clock at night.

It would be utterly impossible to isolate or segregate or control any section of the facility.

For example, on Saturday evenings we have movies in an all-purpose gymnasium and each inmate is required to bring his own metal chair with him, and we have approximately four to five hundred inmates in a very small gym who watch a movie in a darkened area and this is an area that has to be carefully supervised and we have to be very careful there are no problems existing when they go to this kind of situation.

Q. What is the total number of inmates at Wallkill at the present time? A. We have a maximum capacity of 504, but our population usually averages around 475.

Q. Can you give the court an approximate breakdown on the percentage of racial composition there? A. Most recently I had to define that for the United States Civil Rights Commission, and we had 49 per cent black—47 per cent; excuse me—43 per cent white and 10 per cent Spanish-speaking.

(457) Q. Approximately how many transfers do you have per year out of Wallkill Correctional Facility? A. I believe that in the past 18 months is the way we figured it, we had 59, total, transfers, and out of that 59, 12 of them, or 18, were as unsuitable for Wallkill. There were a great many transferred out for medical reasons or by their own request or to enter into a work-release program, but 18 of them were as being unsuitable for Wallkill.

> The Court: What period are you talking about?
>
> The Witness: Eighteen-month period.
>
> The Court: In point of time?
>
> The Witness: 1971 until, I believe, the middle of 1972.

By Mr. Hoffman:

Q. Would you tell the reasons why you would transfer an inmate out of Wallkill because you felt he was unsuitable. A. Well, out of this 18, three or four were for homosexual activities. Because of the open cells and the problems inherent in this, we had to move them out.

Several others were for refusing to become involved in the program, and this is one of the reasons why (458) they were transferred there, and they were not interested in the program and we decided to move them.

We had, I believe, a serious fight with one.

This is the general—I don't remember all of them.

Q. When inmates are transferred as a result of unsuitability, does this necessarily involve the bringing of disciplinary charges? A. Yes, if they are unsuitable, we usually bring disciplinary charges against them.

Q. Are all of your transfers necessarily based on disciplinary offenses? A. No, they are not.

Q. Can you give the court an example of where inmates may be transferred for things which would not be disciplinary things? A. Well, the most recent transfers that we made, to Clinton and to Auburn, is one example; but prior to that we had transferred an individual to Attica to become involved in the work-release program. There is no disciplinary action taken there.

Sometimes an inmate feels as if he cannot adjust to the openness of the facility and he doesn't feel comfortable there and he asks to go back to a maximum (459) security facility, and so we do that.

There may be occasions when there are friends or someone they prefer to associate with in another institution, and they ask to be transferred.

The smallest number of our people are transferred for disciplinary purposes.

Q. Do you necessarily speak to inmates before they are transferred? A. No. It depends entirely what the transfer is for or the reasons for it. If a man is being transferred for medical purposes, naturally you are going to discuss the reasons for his being transferred and the kind of treatment he can expect where he is going; but if a man is being transferred in an emergency situation or for disciplinary purposes, it would be most unwise to tell him or to discuss it with him because there may be severe situations develop, or serious situations develop—

Q. Would you tell the court the types of situations that might develop? A. Most recently, I think in California—

Q. Would you restrict it to New York State. A. Well, they could very easily take the inmates en route—

> (460) Mr. Pochoda: I would ask if the witness would answer the question in terms of fact and not speculation, your Honor.

A. I have to be prepared any time I send an inmate out for any emergency. I don't know that anyone may attempt to secure this individual en route, but I have to assume that they might.

> The Court: I am not sure that that answer would have very much probative weight with the court and since it is already in the record I am not going to strike it, but I would try to direct both counsel and the witness to concrete factual situations.
>
> I recognize you are also an expert and there are certain areas where I will permit opinions to be rendered. I will just take the next question as it comes and we will take them one at a time.

By Mr. Hoffman:

Q. Will you tell the court something about the mechanics of the transfer procedure at Wallkill Correctional Facility?

> The Court: We will address ourselves to the year 1972?
>
> Mr. Hoffman: Yes, your Honor.

A. We request permission either in writing or by telephone to the Albany office on a transfer and unless it is an emergency, we do it by correspondence. The Albany office responds by either accepting our request or denying it. Generally they accept it. They determine what institution he shall be transferred to, but they do not select the date. They say an order is issued for the transfer of a certain individual under suitable supervision when it is convenient to the institution.

Q. How do you physically go about effecting the transfer of an inmate at Wallkill Correctional Facility? A. The deputy superintendent is advised and he selects one or more officers to pick up the inmate, take him to the hospital area where he is dressed and made ready for movement. His personal belongings are taken with him, they are carefully recorded on a transfer sheet, and he takes them generally with him when he moves to the new facility.

Q. To the best of your knowledge, were these procedures followed in this case? A. Yes.

Q. Will you tell the court why these procedures are necessary in a transfer? A. In the event that we were to tell the man prior to our being ready to move him he might barricade (462) himself in his cell, he might encourage some of his friends to assist him in preventing our transferring him, or he may do any of a number of things to forestall his transfer.

Q. What is the Inmate Liaison Committee at Wallkill? A. This is a group in our institution of six inmates who are elected by the inmate population. They are nominated by them, the election is conducted by them, and they work rather closely with the superintendent, not in establishing policy but in better communications between the administration and the inmate population, and since its operation at Wallkill I think it has been a very, very valuable organization, a valuable tool in maintaining good inmate relations, and it has been in existence for about a year.

Q. Can you recall who the members of the Inmate Liaison Committee were in June of 1972? A. I don't believe I can remember all of them. Henry Best, Gagnon, Culpepper, Barnes—Barnes was the chairman of the committee—and I don't recall off-hand—

Q. Do you recall the race of these four men you mentioned? (463) A. I believe that at least three were black, I believe four were black, but out of the six at least three were black.

Q. In June of 1972, to the best of your knowledge was there any hostility between members of the Inmate Liaison Committee and other inmates in the general population? A. Did you say prior to—

Q. No, I said around June of 1972. A. No, there was no animosity that I could observe. It seemed to me that the Liaison Committee was properly representing the inmate population and I thought accomplishing a great deal.

Q. Did anything unusual occur on June 2, 1972? A. Yes. I received a telephone call at the residence at approximately 6:30—I am not sure of the time—from Lieutenant Connolly, who was in charge of the facility on the evening shift. He advised me that a petition was being circulated by a number of inmates and he wanted to know what to do, and I asked him if there was any difficulty and he said no, and I said not to interfere with it, to permit the petition to be circulated, but keep the situation under control, keep it under observation.

(464) About an hour later he again called me and he said that a number of members of the Liaison Committee had come to him and were very much disturbed because they had been advised by other inmates that the petition was being circulated as being sponsored by the Liaison Committee.

He also felt that he should be given an opportunity to address the population just to indicate to them that they did not sponsor the circulation of these petitions, and I asked him if he had a prepared statement and he said he had, and I asked him to read it to me over the phone and he did, and I said yes, I would permit this to be broadcast on the PA system.

About an hour later, or half an hour later, I have forgotten which, I had another call that stated that there was considerable unrest developing, that a great deal of tension had developed, there was a lot of loud arguments erupting in various parts of the institution, and that he wanted to

know what he should do. And I asked him were there any fights and he said no, none that he knew of.

I said to keep it under careful supervision and let me know if it develops, and I heard no more from him the rest of the evening.

(465) Q. What transpired on the following day and the days thereafter? A. The following day was Saturday, and then Sunday, the 3rd and 4th, and the institution remained calm for those two days. I kept in touch with the facility and I reported for duty on the 5th and I asked Assistant Deputy Superintendent O'Mara, who was on that day acting deputy superintendent, to investigate the situation and make whatever recommendations he thought were needed.

He later that day submitted a recommendation to me that approximately eight or ten individuals were very vocal in continuing their arguments for an inmate labor union, and the Liaison Committee was equally vocal in assuming that this was taking away a bit of their authority or making their function useless, and we decided to wait a day or so with the hopes that this might subside. However, it did not.

On the 6th I called the Albany office and told them a situation was developing that I felt needed attention, that there were a number of inmates who were creating a situation that could lead to trouble, and I asked that they be transferred to a suitable facility, without any disciplinary action.

Q. Was there any particular incident or event (466) that you feared would take place? A. Well, on Saturdays we planned to have our regular movie, which most of the inmates look forward to, and this would be a very dangerous place to have even one argument or one serious discussion that might end up in a very bad riot. It is the kind of a situation that lends itself to this.

Also, there had been a number of inmates who had come to officers or to the supervisors and had stated they were fearful that trouble was going to erupt—

Mr. Pochoda: Your Honor, I would object to that answer on the grounds of hearsay. That is double hearsay, I believe.

The Court: Let's strike the answer, and perhaps you can go about the matter in a different way and we will see what develops.

So the objection is sustained, the answer of the witness is stricken.

Q. Were there any meetings that took place in the population? A. There was a meeting in front of the key room on the evening of the circulation of the petition immediately following Mr. Barnes' announcement over the (467) PA system, but it was rather an impromptu sort of thing and was held in an open hallway or an open corridor. There were a number of heated arguments that took place during this time, enough to alert or alarm the supervising officer, who was standing in the hall at the time, Lieutenant Connolly.

Mr. Pochoda: I would ask this be stricken as hearsay.

The Court: Let me make one inquiry of the witness before I rule.

My recollection is that you were not present at the facility on the occasion about which you have just testified?

The Witness: That is correct.

The Court: So that you received a report from another?

The Witness: Yes.

The Court: From whom did you receive that report?

The Witness: Lieutenant Connolly.

The Court: As I understand it, Lieutenant Connolly's deposition has been taken and would be the best evidence. I would therefore sustain the objection and direct that the response of the witness be stricken.

(468) Q. Did the Inmate Liaison Committee meet during that week? A. Yes, they did.

Q. Was there any apprehension on your part about this meeting? A. Yes.

Q. Will you tell the court the steps you took in relation to this meeting? A. I asked the supervisor to give it careful supervision, to be present personally, and to make certain that nothing transpired or to stop anything before it started, and Lieutenant Connolly was present.

Q. Whom did you designate to investigate the situation in the institution? A. Assistant Deputy Superintendent Edward O'Mara.

Q. Did you designate anyone else to make an investigation? A. No.

Q. What did Mr. O'Mara report to you? A. He reported that there was considerable tension, that there were approximately eight inmates who were continuing to voice support for an inmate union, and that he was fearful that there may be trouble.

Q. Were the plaintiffs included in this group of (469) eight? A. They were.

Q. Do you normally oppose the circulation of a petition at Wallkill Correctional Facility? A. No.

Q. Will you tell the court why you were concerned about these particular incidents involved in this case? A. Only because of the attitude from a great number of the population, especially the Liaison Committee, in opposition to this petition.

Q. What action did you finally take as far as the inmates were concerned? A. I decided, after consulting with the—

the deputy superintendent had returned to duty, Nelson Otis, Mr. O'Mara, Mr. Connolly, and we decided to request the transfer of five men.

Q. Why did you choose these five people? A. They were extremely active in maintaining, as I mentioned before, the support for the union. They also were extremely friendly with and worked closely with, as near as we could determine, Martin Sostre, who was then a resident of our facility.

Q. Did you institute any disciplinary proceedings (470) against these inmates? A. No.

Q. Did any of these inmates lose any good time credit as a result of your action? A. No.

Q. Did you cause any of these inmates to be placed in solitary or segregated confinement? A. No.

Q. Did you issue any instructions as to how they were to be treated at the receiving institution? A. No.

Q. Were any of the inmates that were transferred subsequently paroled? A. Yes.

Q. Do you recall who those inmates were? A. Two that we transferred were paroled, Rodriguez and I believe Oliver. Others who signed the petition or who circulated it have been paroled too. I believe one was on the stand yesterday, Coy Smith.

Q. Did any fights break out between any of the five inmates that were transferred and another inmate? A. One. On the day of the transfer—I believe that was the 9th—there was a scuffle outside the deputy superintendent's office, and when they rushed out (471) inmate Oliver and an inmate by the name of Price had been either involved in a fight—Oliver had a pail in his hand and was threatening Price with the pail.

Mr. Pochoda: I ask this be stricken on the grounds of hearsay.

The Court: Were you present? Did you witness that?

The Witness: No. This was a report from the deputy superintendent.

The Court: I would strike the testimony relating to what occurred on the 9th where inmate Oliver was alleged to have threatened another inmate. That will be stricken from the record.

You indicated that five men were selected for transfer and they would include the two plaintiffs, Mr. Newkirk and Mr. Lucas?

The Witness: Yes, sir.

The Court: You indicated in addition the two prior plaintiffs who have been dismissed from this action, Mr. Oliver and Mr. Rodriguez. Could you tell us the name of the fifth individual?

The Witness: Inmate Rosario, who went to Clinton with Lucas and Newkirk.

Q. What was the general atmosphere in the insti- (472) tution after these transfers were effected? A. All tension seemed to resolve. It was back to normal almost immediately. We had no more problems.

Q. Did you at any time confiscate any of the union petitions? A. No.

Q. Did you at any time attempt to obstruct the union petitions from leaving the institution? A. I did not.

Q. What is the manner in which you receive information about problems between inmates at the institution? A. Sometimes from prior observation, but quite often from an inmate who reports to an officer or to a supervisor of a situation.

Q. Did you receive information in this manner in this particular situation? A. I did not personally, but my subordinates did.

Q. Did they report to you? A. Yes, they did.

Q. What are the problems involved in having inmates testify against each other at disciplinary hearings? (473) A. I think it would be fraught with danger. First of all, it would identify an inmate as providing information, we would have continual fights, in my estimation. It would not be a good way to handle it.

Q. What would be the problems involved in granting inmates a hearing prior to their being transferred from an institution in a case like the case we have now? A. Well, for one thing, we do not have any isolation area where we could place them in an emergency. If two men were in a fight and it would not be safe to release them or let them out into the population, we do not have an area where we could keep them confined until it was determined whether or not they should be transferred.

Q. Would the formation of an inmate labor union in Wallkill in June, 1972 pose any specific problem vis-a-vis the Inmate Liaison Committee? A. I believe it would usurp their function, their authority, their responsibilities, and I thought they have done a very fine job. I thought it was a fine introduction, or something that was long needed.

Mr. Hoffman: I have no further questions at this time.

(474) Cross Examination by Mr. Pochoda:

Q. Mr. Butler, you have admitted in this case that you are opposed to the formation of an inmate labor union at the Wallkill Correctional Facility, is that right? A. Yes.

Q. And that was your attitude prior to June 2, 1972? A. I don't think I ever considered it prior to June 2, 1972.

Q. You were familiar with the formation of an inmate labor union at the Green Haven Correctional Facility? A. Yes.

Q. Would it be fair to say that as a general matter you opposed the legal recognition of that type of inmate organization in a prison? A. Yes.

Q. And you have stated to me in the past, have you not, that if you had to sit and bargain with representatives of such a legally recognized inmate labor union it would be very difficult for you to run the prison? A. Yes, I believe that is similar to what I may (475) have said.

Q. You feel, do you not, that just the functioning—just the presence of a functioning and legally recognized inmate labor union would create serious problems for the running of the Wallkill Correctional Facility? A. It could. I say it could create serious problems.

Q. And you felt that way prior to June 2, 1972? A. Yes.

Q. I take it that you are not very happy with the amount of publicity given to the formation and development of the Green Haven labor union? A. That doesn't bother me.

Mr. Hoffman: Your Honor—

The Court: I think the witness has answered the question and we will leave it in the record.

Q. Did you discuss with any inmates at Wallkill prior to June 2, 1972 your feelings or opinions about inmate labor unions? A. No, sir.

Q. You did not state that you were not in favor of such type organizations. A. No, sir.

(476) Q. You did not state to any inmate that such organizations were prohibited at the Wallkill Correctional Facility? A. No, sir.

Q. And you did not state that the circulation of union authorization forms were prohibited? A. No, sir.

Q. In fact, there was no rules prohibiting those activities? A. None whatsoever.

Q. You were aware, I assume, in light of the situation at Green Haven, that such an inmate union effort might begin at the Wallkill Correctional Facility? A. Well, I knew it had happened at Green Haven but I didn't know it would occur at Wallkill.

Q. You did not consider the possibility that it would begin at Wallkill? A. No, I did not. That never entered my mind.

Q. Turning to the events that began on June 2, 1972 at the Wallkill Correctional Facility, you stated you received the first phone call from Lieutenant Connolly about 6:30 p.m.? A. As near as I can recollect.

(477) Q. At that point Mr. Connolly informed you that certain forms were being passed around? A. Yes.

Q. He informed you at that time that these were forms for an inmate labor union? A. He thought they were.

Q. I take it when you heard that you were not very happy that that was what the subject of the forms was? A. I don't agree with that. I told him to permit the circulation of the forms, "Don't do anything to stop them."

Q. You told him at that time, did you not, to convey the information about the circulation of these forms to the Inmate Liaison Committee? A. No, I did not. I asked him what was the attitude or how did the Liaison Committee feel about it.

Q. What did he answer? A. He told me that they were not very happy about it.

Q. Did you give him any instructions relative to the Liaison Committee at that time? A. As far as I recall, no.

(478) Q. And you did not instruct him to stop the circulation in any way? A. No, I did not.

Q. Did you instruct him to find out who was most involved in the circulation? A. No, I did not.

Q. Approximately an hour later, you testified, Connolly called back? A. Yes.

Q. You were located at your home at this time? A. Yes, sir.

Q. Where is that in relation to the prison? A. About a mile from the institution.

Q. And the major portion of that conversation was with Mr. Warren Barnes, is that right? A. Part of it. Mr. Connolly started the conversation by telling me that Barnes and several other members of the Liaison Committee had come to him, were very much distressed because they felt that the petition was being circulated as being sponsored by the Liaison Committee and he wanted to make an announcement that this was not the case.

Q. Mr. Barnes wanted to make the announcement? A. Yes.

(479) Q. Mr. Connolly informed you of this? A. Yes.

Q. Was there anything else he informed you at this time? A. That is as best I can recall, the gist of the conversation.

Q. Then Mr. Barnes got on the phone? A. He said to me could Barnes speak to me and I said yes, to put him on. He told me the same thing, and he said, "I would like to read a prepared statement over the PA system," and I asked him to read it to me and he did, and I told him this was approved.

Q. Did Mr. Barnes go into detail as to what was occurring at the Wallkill Correctional Facility at that time? A. No.

Q. This was extremely unusual, for an inmate to speak over the PA system? A. It is very unusual to have a chairman of a Liaison Committee. We never had one before. This was the first time—

Q. If you will just answer the question, please.

This is very unusual? A. I would say it is the first time, in my recollec- (480) tion as superintendent.

Q. You felt, however, that it was important to take immediate action in this case? A. I felt it was necessary for him to make this announcement to the inmates.

Q. After you spoke to Mr. Barnes did you then speak to Mr. Connolly again? A. Yes. Mr. Connolly called me back—

Q. During this same conversation, after you spoke to Mr. Barnes, did you ever speak to Mr. Connolly again before you hung up? A. I may have said a couple of words but I don't recall any conversation at that time.

Q. After Mr. Barnes said he wanted to make the announcement you said okay— A. I may have said to Mr. Connolly that it was all right for him to make the announcement.

Q. You didn't ask him to wait and consider it further? A. No.

Q. You didn't consider going over to the institution to find out what was occurring? A. No.

Q. You made no other orders about changing the routine at the institution in any manner? (481) A. No, I didn't.

Q. You yourself felt it was important that inmates work through the Liaison Committee? A. Yes.

Q. And then you felt it was important that this kind of action that bypassed the Liaison Committee be discouraged? A. No, I didn't attempt to discourage it; I merely attempted to permit the institution population to know the Liaison Committee did not sponsor it. I felt they should know this.

Q. You knew, did you not, that the announcement by the Liaison Committee would discourage inmates from signing the forms? A. No, I don't think so. I think most of the inmates had signed already, those that were going to sign.

Q. But inmates in the future, after hearing the announcement, they would be discouraged? A. I doubt it. I don't think the fact that the Liaison Committee sponsored or not would have anything to do with it.

Q. You yourself had no information as to what was being said when the petition was being passed around? (482) A. No.

Q. You had no information as to where this possible misconception came from as to who sponsored this petition? A. No. The information I received was from both Lieutenant Connolly and Mr. Barnes. Both of them advised me they had been told. I was not personally there so I could not have gotten that information from the inmates.

Q. The PA system can be heard throughout the institution? A. That's right.

Q. And it is generally used for announcements by either administrators or correction officials as to routines, about how to run certain—necessary announcements for the running of the institution? A. They use it to call inmates for visits, to call inmates for assignments. It is generally used 90 per cent of the time for inmate announcements by a member of the staff.

Q. It is fairly frequent that the inmate would hear some announcement over the PA system? A. Yes.

Q. And on every other occasion those announcements (483) were made by a member of the correction staff? A. Usually, yes.

Q. When an inmate heard the PA system go on he would assume it was an announcement by someone on the official staff? A. I think Mr. Barnes announced he was inmate Barnes, chairman of the Liaison Committee.

Q. You did not hear what he said? A. No, but he read the announcement.

Q. You did not hear what he said? A. No.

Q. When an inmate hears the PA system he assumes it is a member of the correctional facility—

> Mr. Hoffman: I think that is calling for the operation of an inmate's mind, your Honor.
>
> The Court: I think if you want to inquire in this area you could rephrase your question so it would not be objectionable as to form. I will sustain the

objection and if you want to pursue the matter, just rephrase the question.

Mr. Pochoda: I will withdraw the question, your Honor.

Q. Again during this conversation you did not tell Mr. Connolly to stop the circulation of the petition or (484) interfere in any way? A. No, sir.

Q. It was approximately one-half hour later you stated you received another call from Mr. Connolly? A. Approximately.

Q. And at this point Mr. Connolly indicated that there were some verbal arguments? A. Yes. He wanted to know if I would give him permission to post the announcement made by Barnes on the bulletin boards. All announcements have to be approved by the superintendent. And I said I would.

Q. So he called at this time to ask if he could further disseminate the information from the Liaison Committee? A. That's correct.

Q. Did he indicate at that time that there was some reaction to the initial announcement over the PA system by the Liaison Committee? A. He said there were a number of heated discussions relating to—between members of the Liaison Committee and the members or persons who were most vocal in supporting the union. It didn't refer to the announcement, it was just a continuation of this difference of opinion between two groups of people.

(485) Q. Had the announcement been made prior to his third telephone call to you? A. Yes.

Q. And it was only in the third telephone call that he mentioned some serious verbal arguments or loud discussions? A. No, he mentioned it in the second. He said there seemed to be a great deal of discussion and argument as to who was sponsoring this petition. This is one of the reasons why I wanted Barnes to indicate that it was not the Liaison Committee that was sponsoring it.

Q. You felt that this announcement would reduce the tension and the anxiety in the institution? A. Right.

Q. Did you have any discussions with anybody else who was present on the night of June 2nd, who was present at the institution, on June 2nd? A. I think I spoke to Sergeant Alexander.

Q. During the night of June 2nd? A. No, not that night; later.

Q. I am talking about the night of June 2nd. A. No one else.

Q. You had no further contact with anyone there? (486) A. None whatsoever.

Q. The only other person present on June 2nd who you subsequently spoke to was Sergeant Alexander? A. No, I spoke to perhaps some of the other officers who were on duty.

Q. I show you Plaintiffs' Exhibit 2 in evidence and ask if you have seen that report before. A. Yes, I have seen this.

Q. And this is a report from Mr. Connolly to Mr. O'Mara? A. Yes.

Q. The subject is the circulation of petition for inmate union. When did you receive this report? A. On Monday morning.

Q. Monday morning? A. Yes, as near as I can recall.

Q. How did you receive this report? A. Probably from Mr. O'Mara.

Q. You are not sure? A. I am not sure.

Q. I also show you Plaintiffs' Exhibit 3 and ask if you have seen that before. A. Yes, I have seen this—I think I have seen this, but I am not positive. I believe I have. That (487) is just a short statement—

Q. This is addressed to Ed. That would be Mr. O'Mara? A. Yes.

Q. And signed "Art." Would that be Mr. Connolly? A. Right.

Q. Do you know when you might have received this report? A. Probably the same date, probably on Monday.

Q. Did you receive any other written reports as to what occurred on June 2, 1972 at the Wallkill Correctional Facility? A. Not from the officers. From the supervisors only.

Q. Who would that be? A. Deputy Superintendent Otis, Sergeant Alexander. These were perhaps the only—and, of course, Assistant Deputy Superintendent O'Mara.

Q. You received a separate written report from Mr. Alexander? A. One that he had submitted, I believe, to Mr. O'Mara and it was included in the report that was submitted.

(488) Q. I show you Exhibits 12 and 13 and ask if those are the reports you are referring to from Mr. O'Mara. A. This is the written report that Mr. O'Mara gave to me on Monday.

> The Court: Indicating which of the two exhibits, the number?
>
> The Witness: No. 12.
>
> The Court: That is a report from whom?
>
> The Witness: Assistant Deputy Superintendent O'Mara, prepared on Monday and given to me on Monday.
>
> This Exhibit 13 is also a report submitted to me by Mr. O'Mara on Tuesday.

Q. Are these two exhibits the reports that you were referring to when you stated you received reports from Mr. O'Mara? A. Yes.

Q. I would also like to show you Exhibits 7 through 11, reports from Mr. Otis, and ask you if you have seen those before. A. 7 I have seen. 8—

Q. You have seen 8? A. Yes. 9, 10 and 11.

Q. Do you recall when you first read these reports? (489) A. I believe it was Thursday morning.

Q. That would be the 8th of June? A. Yes.

Q. Did you receive any other written reports— A. These reports were prepared for transmission to the Albany office. I included them in transmission when I requested the transfer—I included the reports to the Albany office.

Q. You did not have these reports prior to your decision to transfer people? A. No.

Q. They did not enter into that decision? A. Yes, they did. We discussed it verbally in my office with Mr. O'Mara and Mr. Otis.

Q. And subsequent to that he wrote this up for the records? A. Yes. We had requested it verbally of the Albany office, had requested it by phone, and then we prepared the written reports for transmission to Albany.

Q. So that Mr. Otis was involved in the decision to transfer? A. Upon his return, yes.

Q. Did you receive any other written reports that related to the events of June 2, 1972 at the Wallkill (490) Correctional Facility? A. There may have been mention of some other report in a report, but not individual reports, no.

Q. These would be the extent of it? A. Yes.

Q. I take it this report from Mr. Connolly, Exhibit 2, that you stated you have seen, did influence your decision to transfer plaintiffs? A. Well, it weighed heavily in the decision, yes. He was the officer in charge on the evening of the 2nd. He has been the officer in charge of that shift for a long period of time and was well acquainted with the inmate population, and you become rather well acquainted with the inmates.

Q. Did you request Mr. Connolly to prepare this report? A. I requested a report.

Q. When was that? A. On the night of the 2nd, when he was talking to me.

Q. During one of your phone calls? A. Yes.

Q. I take it it is usual practice that when you are interested in obtaining certain information as to (491) what happened in a certain period of the institution and you were physically not present, you would speak to the officer in charge? A. Right.

Q. I would like to go through this report briefly now. The first sentence reads:

"At 6 p.m. this evening C.O. Blake informed me he observed a petition being circulated by inmates 9273, Sostre, and 9890, Rosario."

When you read this report and saw the words "being circulated," what did that mean to you? A. It was being passed around through the population or someone was taking it about and obtaining signatures.

Q. You envisioned that Mr. Sostre and Mr. Rosario— A. No, I don't believe Mr. Sostre ever would do that. He never circulates anything. He gets somebody else to do it for him. I knew he wouldn't be circulating it.

Q. You did not believe Mr. Sostre was circulating it? A. That's right.

Q. Did you believe that Rosario might be? A. Yes.

(492) Q. You thought that perhaps C.O. Blake was mistaken when he said Sostre was circulating the petition. A. I thought he may have indicated Sostre was the brains behind it, because Sostre was the man who had encouraged other people to circulate.

Q. You read the sentence to mean that Sostre was the brains behind the petition? A. Or the man directing other inmates to do the circulating for him.

Q. That was your impression when you read this particular sentence? A. Yes.

Q. Mr. Rosario, you believed, was circulating the petition when you read this sentence? A. Yes.

Q. What physically did you envision Rosario doing? A. Either having inmates come to his room to sign them or taking the petition itself out to other inmates for them to place their signature on it, affix their signature to it.

Q. It goes on to read:

"At 7:15 p.m."—and an inmate's name is crossed out —"C2019 came to me and told me a serious (493) situation was developing in the institution. He was asked to sign a petition for an organization of an inmate union. He said he refused because the petition had not been cleared through the Inmate Liaison Committee. He said eight or nine inmates were canvassing the population for signitures."

When you read this sentence, "eight or nine inmates were canvassing the population," what did you understand that to mean? A. You must remember, we have had a lot of petitions circulated in the institution. This was not something new and we have permitted these petitions without any interference whatsoever, relating to all kinds of things. So this was not something new. Even though I might not have agreed to the purpose, I was not opposed to a petition.

Q. What do the words "canvassing the population" mean to you? What did they mean when you read this report? A. They were asking inmates if they cared to sign a petition relating to the formation of an inmate union.

Q. The next sentence:

"Mr. Butler was contacted and he advised me to convey all the information regarding the petition to the (494) Liaison Committee."

You testified that you did not make that kind of statement. A. I don't remember that phrase, that manner of speaking. At that time he may have indicated to me that the Liaison Committee was disturbed and I perhaps said, "Well, talk it over with Barnes"—he was the chairman—to find out whether he approved or didn't approve this and he most vehemently indicated he did not and wanted this annoucement made to the population.

He felt that some of the canvassers were implying that this was approved by the Liaison Committee and he did not want that to be an opinion amongst the population.

Q. And you felt that that was serious, that some inmates might be under this misconception and you wanted this unusual announcement to be made? A. The Liaison Committee was an entirely new organization in the institution that had served admirably, and they had done a fine job for the inmate population and for the administration, and it seemed to me they were entitled to make the announcement.

Q. You felt they might be discredited— A. I just felt that their existence depended a (495) great deal on making this kind of announcement.

Q. It is true that some weeks, perhaps a month prior to this, the Inmate Liaison Committee had put up an announcement that appeared publicly throughout the institution that they were opposed to all petitions whatsoever? A. I don't remember any such announcement.

Q. Mr. Barnes in his testimony indicated that had been done. A. I am not aware of that.

Q. It is possible that happened? A. I hardly think it is possible because I usually see the petitions that go on the bulletin boards.

Q. I skip some. The bottom of the last page:

"The following inmates were canvassers for the petition," and the names listed are Sostre, Rosario, Newkirk, Kenny and Oliver."

Do you know or did you know when you read this if Mr. Connolly had seen these men circulate the petition with his own eyes? A. I think he may have seen some of them but I doubt whether he saw all of them.

Q. Do you know which ones he saw? (496) A. No, I don't.

Q. Did you know when you received this how he received the information as to who was canvassing the petition? A. I don't know how he received the information. I wouldn't be able to speak for Mr. Connolly.

Q. After you received the petition did you ask Mr. Connolly specifically how he received the information as to who canvassed for the petition? A. I didn't even show any interest in who was circulating the petitions on the night of the 2nd. I never bothered to ask him.

Q. I am referring to after you received the report on Monday from Mr. Connolly, did you ask him specifically where he got the information as to these five names? A. I was not interested in the canvassers. I was only interested in those creating trouble in the facility, who were keeping the argument alive between the Liaison Committee and the members who wanted a union. I was not interested in discouraging the formation of the union. I was not—

Q. I am not implying that. I am asking if you know specifically where or from whom Mr. Connolly received information, for example, that Mr. Rosario was a canvasser (497) on the night of June 2nd; do you know? A. I presume from the officers.

Q. You do not know? A. I don't know where he obtained his information.

Q. When you received this report you did not ask him which officer he might have received this information from? A. No.

Q. Did you speak to Mr. Connolly further after receiving this report on Monday just what he meant by some of the language in the report? A. I discussed it with him.

Q. When was that? A. Probably Monday evening. I am not exactly sure.

Q. What did you ask him at that time? A. I wanted him to tell me whatever he could about what happened, what transpired, how actively these people were involved, what was the instant situation, what was his assessment of the climate in the institution. I asked all those questions.

Q. Did you ask him about what occurred on Friday, June 2nd, or the present climate? A. I was not interested in what happened on (498) Friday.

Q. So that this document, this report, Exhibit 2, was pretty much the last information that you received or wanted to receive from Mr. Connolly about Friday, June 2nd? A. Would you repeat that?

Q. After you received this particular document, Exhibit 2, you no longer questioned Mr. Connolly about what happened on June 2nd? A. Oh, yes, we discussed it. It was part of the total conversation, but if it referred to the circulators of the petition I was not interested in who circulated petitions.

Q. What other information did Mr. Connolly give you about what occurred on June 2nd that you were interested in? A. He advised me that there was an altercation or some serious discussions or some serious argument in the key room area that evening that alarmed him and a number of the other officers who were present. They were fearful that there may have been a fight that would break out, but it didn't.

Q. At that time Mr. Connolly did not attempt to reinforce the personnel at the key room, did he? (499) A. No.

Q. Did he indicate to you which inmates were involved in this argument at the key room? A. I think in subsequent reports they may have indicated that one or two of the persons transferred were present at that time.

Q. Sticking to Mr. Connolly, did he indicate who was involved in the discussion at the key room? A. It involved several of the inmates. He didn't know them all but he indicated several of the names of the men present.

Q. Can you tell us the names? A. Offhand, I don't know. I think Mr. Lucas was one, but I am not certain.

Q. But did Mr. Connolly state Mr. Lucas was at the key room? A. I think he did—or in the area, in front of the key room.

Q. What did Mr. Connolly say Mr. Lucas was doing? A. I think he was one of those that may have been involved in a heated discussion.

Q. Did he say he was involved in a heated discussion? A. He may have.

(500) Q. You don't recall? A. No, I am not certain.

Q. Did he say what the discussion was about that Mr. Lucas was involved in? A. No, he didn't.

Q. Did he say who he was discussing it with? A. No, he did not.

Q. What other information did Mr. Connolly relate to you about June 2nd that you felt was important? A. The very fact that there was—the only information that he related to me that I considered was very important was the opposition or the—well, the opposition of the Liaison Committee to the circulation of the petition. That is perhaps the extent of his discussion with me.

Q. Was there any other information about June 2nd that you obtained from Mr. Connolly or does that pretty much cover it? A. That pretty much covers it.

Q. Did you have any subsequent discussions with Mr. Connolly about the events that took place on June 2nd? A. I doubt it. It may have come up in a conversation, but I couldn't recall it.

The Court: I think this might be a good time (501) to take a very short break. It is a quarter of 12 and we will recess for five minutes, if that is convenient to all concerned, and then we will resume and continue to 1 o'clock.

(Recess.)

By Mr. Pochoda:

Q. Mr. Butler, you mentioned that you had further conversations with Mr. Connolly on Monday, June 5th I believe that would be, about the present situation at that time in the institution. A. Yes.

Q. What did Mr. Connolly tell you about that situation? A. He felt that there were still rival factions and that there was a great deal of tension and he was concerned.

Q. When you say rival factions, you mean the Liaison Committee members on one side and certain persons involved with the union on the other side? A. Yes.

Q. Did Mr. Connolly state to you who those persons were? A. Yes. He mentioned some of them.

Q. Who did you state— (502) A. He mentioned, again, Martin Sostre. He mentioned most of the persons that were submitted on the list to me by the assistant deputy superintendent: Lucas, Newkirk, Rosario—

Q. Are you referring to Exhibit 12? Is this the list you are referring to (handing)? A. Yes. I don't think he had Rodriguez' name on his, but he did have similar names to what I have on here.

Q. Did he have other names besides those? A. I am not exactly certain. There may have been. . I am not certain.

Q. Is it your recollection that he had all of those names except Mr. Rodriguez? A. I don't remember him reporting Rodriguez. This was a new man that was reported the following day or had been reported by Mr. O'Mara on information given to him by other people.

I think there was a great deal of similarity in the persons that he considered actively involved in this.

Q. Had you prior to that discussion on Monday asked him to compile such a list? A. No, I had not.

(503) Q. You just began the discussion on Monday and asked him who was the most actively involved with the union? A. I think he did it for his own information, prepared a list of the persons he thought might have been in it—

Q. He had a written list of names? A. Yes. He may have prepared it for Mr. O'Mara. I am not certain.

Q. Do you know if he gave that list to Mr. O'Mara? A. No.

Q. He prepared it for you? A. I am not certain. I think I may have seen a list he submitted.

Q. This list of persons were the persons who after June 2nd were actively involved in the union? A. No, not actively involved in the union, but persons who were very vocal and who continued to create a problem with the Liaison Committee. I thought perhaps the situation might resolve itself with the passing of a day or two, that they would stop this. After all, the petitions had been prepared. But it didn't; it continued.

Q. You thought that active discussion about the (504) union might cease after the Liaison Committee announcement? A. That's correct.

Q. You believed that Mr. Newkirk was on Mr. Connolly's list? A. I believe so.

Q. What did he say Mr. Newkirk did on Saturday, June 3rd? A. I don't specifically remember.

Q. Do you know what he said Mr. Newkirk did on Sunday, June 4th? A. I don't think he gave me any report whatsoever on what transpired on the 3rd or 4th. This was on a Saturday and Sunday and, as near as I can recall, it was comparatively quiet those two days.

Q. Basically you are referring to what took place on Monday, June 5th? A. Yes.

Q. What did Mr. Connolly say Mr. Newkirk did on Monday, June 5th, that included his name— A. He did not specifically indicate what he did on the 5th. He said from the information gathered, or Mr. O'Mara stated from the information he had gathered, and part of that came from Lieutenant Connolly, that these (505) persons he submitted to me were very active in their support, vocally, concerning the inmate union, establishment of an inmate union.

Q. Mr. Connolly might have gotten his list from Mr. O'Mara? A. No, Mr. O'Mara got his from Mr. Connnolly.

Q. Mr. Connolly, I take it, was not at the institution until 4 p. m. on Monday, June 5th? A. That's correct.

Q. When was your discussion with him on Monday? A. Probably just before he went on duty. He usually comes on very early and I am there long after he comes on.

Q. So his information would not include personal observations he had made at the institution on Monday, June 5th? A. It may have included his thinking. I am not sure of that.

Q. He was not on duty at that time? A. Not during the day. He was on duty on the 4-to-12 shift.

Q. This discussion with you was prior to the 4-to-12 shift on Monday? A. Yes.

(506) Q. You don't know what made—specifically what actions that Mr. Lucas had done that made Mr. Connolly include his name on the list? A. That's correct.

Q. Did Mr. Connolly mention any of the persons on the Inmate Liaison Committee as having been very vocal in opposition to the union? A. No.

Q. This was not mentioned? A. No.

Q. He just said there were these two rival factions? A. Yes.

Q. Did you ask him who on the Liaison Committee were most vocal and continued to speak out against the union? A. No, not specifically, I didn't.

Q. Did you have any subsequent conversations with Mr. Connolly about the union situation or who should be transferred because of this situation? A. No.

Q. After this discussion on Monday that ended Mr. Connolly's involvement in this passing of information along? A. Right.

(507) Q. I ask you to look at Plaintiffs' Exhibit 3 (handing) just to refresh your recollection.

This states—I believe to the best of your recollection you think you received this on Monday— A. No, I didn't say that. This is a report from Mr. Connolly to the assistant deputy superintendent concerning the observations of one of the employees.

Q. You don't know if you yourself received this? A. I don't remember whether I got this orally or whether I saw this in writing.

Q. It says that Mr. Koch reported certain information about Mr. Lucas and Mr. Passanante. You do not know whether Mr. Koch observed Mr. Lucas or Mr. Passanante doing anything or got the information from someone else? A. If he states he observed it—

Q. "C.O. Koch reported Lucas and Passanante were circulating the petitions for a union."

You do not know how Mr. Koch got that information? A. I presume he observed it, because he is an officer on duty and would have an opportunity to observe it.

Q. You do not know whether he observed it? A. No.

(508) Q. On Friday night, June 2nd, Mr. Koch was not on duty? A. I am not aware of that.

Q. Did you have any conversations with Mr. Koch? A. None whatsoever.

Q. About this situation? A. None.

Q. You testified that at some point you asked Mr. O'Mara then to investigate the situation further? A. That's correct.

Q. When was that? A. Monday morning.

Q. What did you tell Mr. O'Mara? A. I reviewed the situation of what happened on the 2nd and that I believed that tension was continuing and might be building, and I wanted him to make a thorough investigation and report to me.

Q. Mr. O'Mara was not on duty on the night of June 2nd? A. No.

Q. You say the information about June 2nd was information you obtained from Mr. Connolly. A. Most of it, yes.

Q. Who else did you obtain information from? A. I think probably I received all of it from Mr. (509) Connolly. That is who I had the conversation with over the phone.

Q. Did you direct Mr. O'Mara to take certain steps in conducting his investigation? A. No.

Q. I take it that this Exhibit 12 is the result of the investigations that Mr. O'Mara took pursuant to that conversation? A. Yes. This is his report.

Q. When did you receive this report? A. I believe on Monday afternoon.

Q. That same day, Monday afternoon? A. Yes.

Q. Just looking at some of the items in this report:

"A copy of the petition was confiscated from No. 9927, Passanante, which contained three names."

You were aware that the petition had been confiscated? A. No. I wasn't aware that any petition was confiscated that contained names. I think a petition was obtained to determine who was being circulated without the destruction of any that had any names attached to it.

(510) Q. Does hearing this refresh your memory about that? A. I don't remember, no, not of any petition that was picked up that had any names on it or that was kept or confiscated, as you mentioned.

Q. Do you have any reason to doubt that the information

contained in that sentence is incorrect? A. I doubt any petition was confiscated that bore any names.

Q. You believe Mr. O'Mara is mistaken when he states a petition which contained three, and after the word three the numeral 3, names, was confiscated? A. Yes.

Q. You believe that was a mistake? A. I did not know of any petition being confiscated.

Q. It is possible that petitions could be confiscated and you would not have knowledge of that? A. It could be, but I doubt it.

Q. You think this was a mistake on Mr. O'Mara's part? A. Yes.

Q. The report is inaccurate in that sense? A. I had no complaints from my inmates that (511) petitions had been confiscated.

Q. On that basis you conclude no petitions were confiscated? A. That's right.

Q. It states:

"It has been reliably reported that a petition with 225 to 250 signatures is in the population."

Do you know where Mr. O'Mara got those reliable reports? A. No.

Q. Did you ask him? A. I think he got some of it from some inmates who may have given him this information, but I am not certain.

Q. You are not certain? A. No.

Q. "Several officers have reported that individual inmates expressed regret and apprehension about having signed the petition."

Do you know of your own knowledge who those officers were? A. No.

Q. It goes on:

"It is coincidental that this activity sprung (512) into being shortly after the Inmate Liaison Committee raised the subject for premium wages for off-the-institution-grounds work. I know the ILC has disavowed any part in this activity, but I wonder about the timing."

Did you ask Mr. O'Mara any questions about this particular section of the report? A. No. I was aware of that. I meet with the Liaison Committee once a month and one of the members asked if it was possible to provide those inmates who worked on an outside project with premium wages, and I told them it would not be possible since this was a training situation and these were vocational classes and it would be very unfair to pay them one scale and pay the other inmates in the institution another scale, and they accepted that explanation, apparently.

Q. I take it Mr. O'Mara has some feeling that it might be possible that the timing of this petition was due to the Inmate Liasion Committee's concern with these wages? A. He might have been concerned. That is apparent by his statement.

Q. You were not concerned about that? A. No, I didn't think there was much bearing in that.

(513) Q. You did not speak to anybody on the Inmate Liaison Committee about this possible connection? A. No, I did not.

Q. It goes on:

"On Sunday, June 4, 1972, I received a phone call from Lieutenant McMahon informing me information had been received indicating some kind of trouble on C and D galleries at 7 a.m. I reported to the institution to assist but the rumor proved to be false. However, several officers reported they had received information that during the movie on Saturday evening there was a considerable amount of vocal expression relative to race expressed while the lights were out. Evidently the picture denoted racial conflict and some members of the population reacted to it."

I take it then there was some incident that took place during the showing of the movie that created a racial con-

flict between the inmates— A. I didn't relate this to the petition. This is something that is possible all the time. It wasn't very serious. That is the only report he made, in passing.

Q. You did not receive any other written reports about this? (514) A. No.

Q. So you concluded it wasn't very serious? A. Yes.

Q. I take it that racial conflict between inmates is a continuing concern of yours? A. Of course.

Q. And it is often a cause of hostility and tension among inmates? A. Yes.

Q. And on this Saturday it erupted into an incident? A. I don't think it could have been very much because it would have been reported if it had been. I think this was one or two or three or four people, but nothing serious enough to warrant a special report.

Q. "There was a considerable amount of vocal expression relative to race."

This was at the time the movie was being shown and it is a time of the most special concern of yours about an uprising? A. Yes.

Q. You were not concerned that there might have been this yelling back and forth about race? A. I don't think it was yelling. There may (515) have been loud talking in the movies that may have concerned one or two people.

Q. Did you take any steps to insure that in the next movie this would not occur? A. No. I didn't think it was that serious. I might mention that we had a previous movie and there was concern that there may be racial overtones as a result of the movie, and I came to the institution and talked to the inmate population before the showing of the movie, and this seemed to prevent, or hopefully prevent, problems. But we had heard rumors that there would be a racial disturbance in the movie as a result of the picture being shown.

Q. You were aware of the possibility of some disturbance? A. I came to the facility and talked to the men before the movie was shown.

Q. And this effectively reduced some of the tension? A. I hope so. There were no problems, at any rate.

Q. You are not concerned about the vocal expression— A. No. This occurs, but as long as it is (516) nothing out of the ordinary—I think Mr. O'Mara may have been slightly concerned about it but not to the point where we assigned other officers or called off the movie.

Q. Loud discussion is not out of the ordinary— A. I would have to know what was said.

Q. Did you ask Mr. O'Mara exactly what was said? A. He got it from another officer. He was not there.

Q. Did you ask the other officer? A. No. I asked Mr. O'Mara what had been related to him and I said I didn't think it was that serious.

Q. The report goes on:

"The following named inmates have been reported as being very active circulating the petition."

You do not know who made those reports to Mr. O'Mara? A. No.

Q. You did not ask Mr. O'Mara who made those reports? A. No.

Q. And you did not yourself try to independently go to those persons and find out who circulated the (517) petition? A. No, I did not.

Q. The names listed are Sostre, Lucas, Passanante, Kenny, Oliver, Rosario, Newkirk and Rodriguez.

Next to Sostre it states, "The prime mover and instigigator." You do not know from what source Mr. O'Mara received that information? A. I think perhaps that would be observed by most of the officers who work on that shift. He has been the prime mover and instigator in any problems we had in the institution up to that time.

Q. And you considered the union a problem? A. No, that was not the problem. The problem was the confrontation between the two groups. Circulation was not the problem.

Q. You do not know in this case specifically what reports Mr. O'Mara received that indicated Sostre was the prime mover and instigator? A. No.

Q. It states, after Mr. Lucas' name: "Reports indicate that he and Sostre in consort with Legal Aid instigated petition."

Do you know specifically where Mr. O'Mara got that information? (518) A. Would you repeat that?

Q. Yes.

"Reports indicate that he and Sostre in consort with Legal Aid instigated petition." A. Who is "he"?

Q. Mr. Lucas. This is next to Mr. Lucas' name on the report (handing).

> The Court: The record should indicate that counsel is showing the witness Plaintiffs' Exhibit 12 in evidence.

A. All right—

Q. Do you know where Mr. O'Mara got those reports from or from whom? A. Probably from the—I presume from the officer, but I wouldn't know what shift it might have come from. If Mr. Lucas frequented Mr. Sostre's cell, and this might indicate he and Sostre were friendly, and then if he circulated the petition—I think it was common knowledge through the institution that you and Mr. Sostre were quite often visiting in the visiting room, and there had been some rumors about the institution prior to this time that a union may attempt to be—this was the day before, I think, after your visit to see Mr. Sostre.

Q. After that you heard that a union might be (519) formed? A. I heard this.

Q. You do not know from whom Mr. O'Mara received this particular piece of information about Mr. Sostre and Mr. Lucas and the Legal Aid Society? A. No.

Q. You don't know exactly what they said. You speculated that he and Mr. Sostre were friends, but do not know what the reports stated? A. No.

Q. Did you know if Mr. Lucas ever spoke to anybody from the Legal Aid Society? A. No.

Q. Did you check that? A. No.

Q. You do not know that Mr. Lucas was never in touch with anyone from the Legal Aid Society? A. No, I don't.

Q. It says next to Mr. Newkirk's name: "Reported by Lieutenant Connolly as actively involved in securing signatures."

> Mr. O'Mara, I assume, was referring to Mr. Connolly's report?

A. I am not certain.

(520) Q. It might have been an independent discussion? A. It might have been.

Q. The last two paragraphs of this report:

"There is a rumor received from several sources that an attempt is being made to dump Barnes of the ILC and that Sostre is behind this. I have not been able to figure how this fits in with the recent activity."

Do you know where Mr. O'Mara heard this rumor? A. No.

Q. Did you ask him? A. No.

Q. Did you make any investigation of this particular piece of information? A. No. I think there was some feeling around the facility that there may have not been the most friendly relationship between Barnes and Sostre, but then this often occurs between two inmates in a facility.

Q. Was there a feeling in the institution that there was not friendly feelings between Lucas and Barnes? A. I don't know anything about that.

Q. Was there any rumor or feeling in the institution there was a conflict between Newkirk and Barnes? (521) A. Only Sostre and Barnes.

Q. Did you have any information that there was conflict between Lucas and anybody on the Liason Committee? A. Not specifically.

Q. Or any conflict between Mr. Newkirk and anybody on the Liaison Committee? A. Not specifically.

Q. I believe you stated that you asked Mr. O'Mara to find out what was happening at the institution as of that date, Monday, what the present situation was. A. I think that is what I mentioned, yes.

Q. This report I have just read only talks about the activities, at least in terms of the union, that took place on Friday, June 2nd. Can you explain why Mr. O'Mara only talked about who was active on Friday, June 2nd, as opposed to what you say you requested him to do? A. I asked him to make an investigation concerning the events of Friday, June 2nd. Nothing had occurred on Saturday or Sunday that warranted such a report.

Q. Did anything occur on Monday that warranted a report? A. By Monday there seemed to be an increase in the tension again in the institution. This is when we began (522) to notice it. We had reports that there was increasing tension. We had anticipated a reduction in tension rather than an increase.

Q. What did you yourself notice on Monday, June 5th? A. I did not circulate through the facility. I go to my office and the supervisors come to me. Anything I got was a report from them.

Q. You yourself did not notice an increase in tension? A. That is correct.

Q. What reports did you get on Monday that tension had increased? A. Reports that there was considerable tension apparenty in the institution, and this is something you have to work in a facility to recognize. This is when small groups gather, when you pass them and the conversation ceases. There are many signs that would indicate that all is not well, that something is either being planned or there is some dissatisfaction.

Q. Specifically what evidence was mentioned to you that officers had seen that indicated tension on Monday, June 5th? A. They indicated to me that apparently there was (523) tension, and you don't ask them how. If you have worked there for a length of time you recognize it.

Q. They did not point out specific incidents that took place that indicated to them there was tension in the institution on Monday? A. No.

Q. They did not indicate particular conversations— A. They may have to their supervisors, but—

Q. To yourself? A. No.

Q. When you asked Mr. O'Mara to make out this report you had only the general statement from these officers that tension was increasing? A. This is an accumulation of whatever material he could locate or whatever information, including his own observation he had as to the climate in the institution.

Q. At the present time? A. On Monday.

Q. He doesn't mention Monday in his report? A. No. I asked him to make this report concerning Friday, but this was when I had the telephone calls from Mr. Connolly, when we had the broadcast, when we had the confrontation in front of the key room. I (524) wanted a report on the events of that evening. Apparently Saturday and Sunday was comparatively quiet and there was nothing to report.

Q. Again, though, you were not concerned about who was circulating the petition on that evening? A. No, I wasn't.

Q. This report came to you, Exhibit 12, on that Monday, the same day? A. Yes.

Q. Then did you have further discussion with Mr. O'Mara about the situation? A. Yes.

Q. When was that? A. We discussed it on Tuesday, we discussed it when Mr. Otis came back. We discussed it on several occasions.

Q. When was the next time after you received this report that you recall discussing it with Mr. O'Mara? A. I am not certain. There was a period of five days there and it is very difficult for me to establish exactly what hour or moment I was discussing this with Mr. O'Mara or Mr.. Otis.

Q. Do you recall a specific discussion after receiving this report about this report with Mr. O'Mara, (525) Exhibit 12? A. Yes. I discussed it with him. One time later I discussed it with him but it was in regards to Rodriguez. That was the only person we discussed at that time. Prior to this we discussed it to determine what should be done about the situation, was the tension resolving itself or was the tempo increasing.

Q. To the best of your recollection, when did this discussion take place? A. Monday afternoon.

Q. What did Mr. O'Mara indicate should be done about the situation? A. Mr. O'Mara thought we ought to wait a day or two and find out what happens, is this thing going to resolve itself or continue.

On Tuesday—

> The Court: Did you agree with that?
> The Witness: Yes, I did.

Q. Did you receive any further information from Mr. O'Mara during this discussion about the specifics that were taking place on Monday that was creating tension? A. No, just generally.

Q. You don't know the specific people involved? A. No.

(526) Q. You don't know the specific topic of the conversations? A. No.

Q. Did you speak to anyone else on Monday, June 5th, or Monday evening, June 5th, about what was taking place in the institution on that date? A. I may have talked to Lieutenant Connolly, but I am not exactly certain that I talked to him that evening or the next evening. I am not exactly certain.

Q. Did Lieutenant Connolly, to your recollection, indicate or have information as to what specifically was creating tension on Monday, June 5th? A. No. Specifically, the confrontation or the division of the inmate population between those who believed in the Liaison Committee and they should act as their representatives or whether to have a labor union.

Q. Did Mr. O'Mara, in your conversation on Monday evening after you received this report, state to you that that was the cause of the tension? A. Yes. He felt this was a conflict between those pro-union and those pro-Liaison Committee.

Q. How did you decide who was pro-union? A. It was quite apparent that those who circulated (527) the petition would be pro-union or they wouldn't have circulated the petition. However, there were many more who circulated the petition than those whose names appeared on the sheet. We were more concerned with those who continued to vocally announce their position in relation to a labor union, how important it was that they have it, and they wouldn't let up, and I felt that this was perhaps instigated or supported by Martin Sostre and those persons friendly with him.

Q. Did Mr. O'Mara, at your meeting on June 5th, state to you the names of persons who on Monday, June 5th, were continuing to discuss the union very strongly? A. A. I don't think he specifically mentioned it in that manner.

Q. Did Mr. Connolly, on your discussion on either Monday or Tuesday, state who specifically was continuing to very strongly discuss the union? A. He stated in his opinion those are the persons, these were the persons who he felt were continuing this argument relating to or the discussions, heated discussions, between the two organizations.

Q. We spoke about Mr. Connolly's conversation before and I don't believe at that time you stated that he (528) indicated that these persons were involved in any arguments about the union. A. He may not have personally observed it, but this was information that he probably obtained as supervisor of a shift, either through observations or by talking to inmates or through discussions with subordinate employees—I don't know how he obtained it.

Q. Do you recall if Mr. Connolly reported that Mr. Newkirk was involved in an argument with anybody? A. No.

Q. Do you recall if Mr. Connolly reported Mr. Lucas was involved in an argument with anybody? A. No, I don't.

Q. And neither did Mr. O'Mara? A. I don't recall that. These were the names submitted to me as being persons who were, in their opinion, leaders in the group pushing or working diligently to espouse union organization.

Q. Did you ask either of these men to prepare a written report as to the events that took place from Monday on at the institution? A. No.

Q. You did not consider it a serious situation? A. I considered it serious, but I was present (529) during these days and they came to my office quite frequently to discuss it.

Q. The only written report you received was about what took place on Friday, June 2nd? A. The only one I received, yes, from Mr. O'Mara.

Q. The only specific list of names you had were those involved in the circulation on Friday? A. That's right.

Q. And you used the names as an indication that these persons were active in the union? A. I would presume those persons circulating the petitions were certainly active in sponsoring the union or indicating vocally that they sponsored the union. There were eight or ten names that were submitted and this does not include all of those who circulated petitions. This was merely the group that continued to discuss and to vocally support the union.

Q. In Mr. Connolly's report, Exhibit 2, and that concerns only Friday, June 5th, were all of the men he observed or had reports on as circulating the petitions? A. Right.

Q. Mr. Koch's report only concerned who was circulating the petition? A. Yes.

(530) Q. These two reports would be all those men they had reports on who were circulating the petition? A. I presume so.

Q. Who else was circulating the petition? A. I think there were a number of persons—you had a list of names here. I believe Coy Smith, although I don't think Coy Smith signed it, but I think he was one of the persons who signed your original petition for a union—

Q. Constitution? A. Constitution. But Coy Smith was not an agitator, created no problems, and we had no reason to even submit his name.

Q. What other reports did you receive about Friday, June 2nd, that indicated any other names besides the ones in Mr. Connolly's and Mr. Koch's report? A. Those are the only ones.

Q. You do not know of any other persons who were circulating the petition? A. I had reports that evening that a number of inmates were circulating petitions. We were not even exactly certain how many, and we didn't care. I didn't say, "Get the names of the men circulating petitions," because I didn't care. Petition-making was a common (531) practice in Wallkill.

Q. But Mr. O'Mara got you the names of people circulating the petitions? A. He got the names of those most active and those who continued to be active. I think the fact that they were circulating petitions only indicated that they were also active on Friday night as well as subsequent evenings or days.

Q. You do not have any specific reports that Mr. Lucas, for example, did such-and-such on Monday and there was his name on it? A. No.

Q. The only information we have is "The following named inmates have been reported as being very active in circulating the petition," from Exhibit 12? A. Right.

Q. I show you Plaintiffs' Exhibit 13 and ask you how that came about, if you remember. A. I asked them to submit me a list of those persons they thought were actively involved in creating this tension in the institution. This was the list they gave me.

Q. Who did you ask this? A. Mr. O'Mara.

(532) Q. When did you make this request? A. On the 6th.

Q. That would be Tuesday, June 6th? A. No, that was Monday, I think.

Q. Monday is the 5th. A. It could have been the 5th. I think I asked him Monday to prepare a list of those persons who were continuing activity.

Q. That was after you received his first report, Exhibit 12? A. I received one report on the 5th from Mr. O'Mara, and I believe I received a subsequent report with specific names on the 8th, but I am not exactly certain. But I believe that was the date I called the Albany office.

Q. This report, Exhibit 13th, has the same group of names that appear in Exhibit 12, is that right (handing)? A. Well, you have one addition, you have Passanante—oh, he is up here.

> The Court: Let the record show that counsel is showing the witness Plaintiffs' Exhibits 12 and 13 in evidence and that the witness is examining them.

A. Yes, they are the same. The thing is, we have changed the order on the list. I told him to list (533) them in the order in which he thought they should be transferred if we decided to move any out.

Q. After you received this first report, Exhibit 12, you asked Mr. O'Mara if he would list in order of their continued activity the names that appear in Exhibit 12? A. Yes, the more serious troublemakers or problems we had should be the ones considered—

Q. Put the most serious ones on top? A. Yes.

Q. Did you indicate how he should go about making this evaluation? A. No. I felt he could use his own experience and judgment in doing that.

Q. But you wanted this based on those people who were creating the most tension somehow? A. That's correct.

Q. When did you receive this Exhibit 13? A. I think I probably received it on the 6th.

Q. Tuesday, June 6th? A. Yes. But I called the names into the commissioner's office on the 6th.

The Court: Could I see the exhibit, please?
Mr. Pochoda: Yes, your Honor (handing).
(534) (Pause.)
The Court: Thank you.

By Mr. Pochoda:

Q. This report, Exhibit 13, is to yourself from Mr. O'Mara, June 6, 1972. The subject is "Recommendation For Transfer."

I take it that in your discussion preceding this report, with Mr. O'Mara, you discussed the possibility that certain inmates would have to be transferred because of the situation at Wallkill? A. I thought that might become necessary, yes.

Q. You thought this conflict situation might require some persons being removed from the institution? A. That's right.

Q. And you asked him, in order of what you considered their troublemaking, to list their names? A. That's right.

Q. I read from the report:

"After consultation with Lieutenants Henry and Stark, as well as inquiries to several officers, the following named inmates are recommended for transfer in the order named."

Do you know the other officers Mr. O'Mara spoke to? (535) A. No.

Q. Did you ask him who they were? A. No.

Q. Do you know what his conversation with Lieutenant Henry consisted of? A. No.

Q. Did you ask him that? A. No.

Q. Did you know what his conversation with Lieutenant Stark consisted of? A. No.

Q. Did you ask him that? A. No.

Q. After receiving this report you yourself did not make a further investigation as to whether this order was correct? A. No, I did not.

Q. The list, and I will read it in order: No. 1, Sostre; No. 2, Lucas; No. 3, Newkirk; No. 4, Rosario; No. 5, Rodriguez; No. 6, Oliver; No. 7 Kenny; No. 8, Passanante. This is from Exhibit 13.

Why was Mr. Lucas placed second and Mr. Oliver placed sixth? A. I don't know. You would have to ask Mr. (536) O'Mara.

Q. What did Mr. Newkirk do on Monday, June 5th, that was different from what Mr. Kenny did on Monday, June 5th? A. I don't know.

Q. Do you know what Mr. Newkirk did on any of the days prior to this report that was different from what Mr. Kenny did? A. I couldn't answer that.

Q. Do you know what Mr. Newkirk did on any of the days different from Mr. Passanante? A. I don't know.

Q. Do you know how Mr. Lucas' behavior was different from Mr. Passanante's or Mr. Kenny's? A. I don't know.

Q. What time of the day did you receive this report? A. I don't remember exactly.

Q. Approximately, if you recall. A. I would say in the afternoon some time.

Q. Tuesday afternoon, June 6th? A. Yes, I would say so.

Q. When did you make your phone call to Albany? A. I am not sure about that. It might have been (537) some time during the afternoon.

Q. Some time during Tuesday afternoon? A. Right.

Q. It was— A. I don't recall the exact time that I made the calls.

Q. It would have been within a matter of two or three hours after you received this report? A. I would presume so, yes.

Q. Did you have further discussions with Mr. O'Mara about who should have been transferred? A. No.

Q. After you received this, this was the extent of Mr. O'Mara's involvement in the decision? A. That's correct.

Q. Did you speak to anyone else after receiving this report and before you made your phone call about who should be transferred? A. No, I don't believe I did.

Q. Prior to receiving this report on Tuesday, June 6th, did you speak to any other officials about who should be transferred? A. I spoke to Mr. Otis, but I don't recall exactly when I spoke to him, Mr. Otis not having been present, (538) and he was only taking Mr. O'Mara's report, as it were. I did not consider Mr. Otis was that important, except whether or not he agreed with this, and he did agree with it, but I am not exactly certain what time I discussed it with him.

Q. Do you believe it was Tuesday? A. I am not certain when. Mr. O'Mara had been acting deputy superintendent when this occurred and on the Monday following the weekend, and most of my conversations were with him. Mr. Otis just took over when he came back to duty. He prepared the written reports for the Albany office.

Q. Did you speak to anyone else about who should be transferred? A. No, sir.

Q. Isn't it true that Mr. Otis was on vacation and didn't return until Wednesday morning? A. That's possible.

Q. It was after the time you called Albany? A. Yes, apparently it was, if you say he came back Wednesday.

Q. You said earlier that the tension was created because of a conflict between two groups. You did not receive any names of any persons on the Liaison Committee (539) involved in the arguments? A. No.

Q. Did you ask any of the persons making these investigations for you who on the Liason Committee was the most vocal? A. I don't recall. I think that Barnes may have been quite vocal, but I don't recall asking specifically whether they were or not.

Q. You did not ask Mr. O'Mara, Mr. Connolly or Mr. Otis to investigate who on the Liaison Committee was most vocal in these arguments against the union, did you? A. No.

Q. When you received this report, Exhibit 13, from Mr. O'Mara on June 6th, did he indicate to you any specific incidents that Mr. Newkirk was involved in on Monday or Tuesday, June 5th or 6th, that led him to put his name down on this particular list? A. I think that is the same question you asked me before, but I still say no.

Q. Did he have any specific incidents that Mr. Lucas was involved in on Monday or Tuesday, June 5th or 6th, that led to putting his name down on the list? A. I wouldn't know whether he had any knowledge of (540) specific instances. He did not relate them to me.

Q. What did you believe when you received this report that Mr. Lucas was doing that required his transfer if you had no knowledge of specific actions he was engaged in? A. I was governed by the recommendations of a subordinate supervisor who had a great deal of experience in correctional work, is a deputy superintendent, has about 30 years of service, and he must have observed or obtained information that caused him to make these recommendations.

Q. It is a serious thing to be transferred from Walkill, is it not? A. Not always.

Q. When it is done against an inmate's will it results in serious deprivation? A. If time allowance is lost as a result, yes.

Q. You would agree none of the persons on this list, to your knowledge, at this date wanted to leave Wallkill, did they? A. No, I don't believe they did.

Q. When you received this report, if you would, what behavior did you envision that Mr. Lucas had engaged in on Monday and Tuesday, June 5th and 6th, that necessitated his removal from the Wallkill Correctional Facility? (541) A. I presume that he as a follower of Sostre was promoting dissent and trouble in the facility, that he was creating or attempting to create problems or trouble within the institution, and since he was so very closely allied with Sostre, from the reports submitted, this is what I felt he was doing.

Q. The reports are the ones we referred to? A. And others, verbal reports, prior to the circulation of the union petition, and they were friendly and allied with Sostre in the institution.

Q. This was from information you received prior to that time— A. I think they were influenced by that knowledge.

Q. Would that be the same for Mr. Newkirk? A. Yes.

Q. And everybody on this list? A. All of them were, to a degree, very friendly with and considered by him as followers of Martin Sostre in the facility.

Q. But you yourself had personal knowledge of the relationship between Mr. Lucas and Mr. Sostre? A. No. Only that reported to me.

Q. Do you know how friendly Mr. Newkirk was with Mr. Sostre? (542) A. Only what has been related to me.

Q. What was related to you about Mr. Newkirk's relationship with Mr. Sostre? A. That he was quite often visiting with Mr. Sostre in his cell in the evening —

Q. Who related that to you? A. The supervisor on the 4-to-12 shift.

Q. Mr. Connolly? A. Yes.

Q. That was prior to June 2nd? A. Yes.

Q. You became suspicious of Mr. Newkirk for that reason? A. Not suspicious. I had this prior information and I presumed that he was again carrying out the wishes of Martin Sostre, to create problems, if he could. I felt that this should have died a natural death, that once the petition was submitted and sent to whatever areas it should have done, that then this should have waited for activities in the courts to decide whether or not we would have a union. There was no need to continue the discussion, but it didn't stop.

Q. Do you know how many signatures were obtained on June 2nd? (543) A. No.

Q. Or on Saturday and Sunday? A. No.

Q. Or on Monday? A. No.

Q. You had no idea if the requisite number of signatures had been obtained? A. No. I don't know how many were obtained or whether they stopped obtaining them. I presume they had all they wanted on Friday, or maybe Saturday.

Q. Did you ask any of the inmates or even any of the lawyers involved with this whether they had obtained the requisite number of signatures? A. No.

Q. You did not ask if they had finished that particular stage of the process in terms of certification of the labor union at Wallkill? A. No, I didn't.

Q. What specific acts you felt Mr. Lucas might have been doing—what specific acts did you believe Mr. Lucas was doing on Monday and Tuesday that required his removal from the Wallkill Correctional Facility? A. Again, I was governed by a recommendation by a subordinate supervisor who had many, many, years of experi- (544) ence in the correctional field. Perhaps this man was advocating whatever to form a union and what might the results be, the advantages to the inmate population as the result of an inmate union, and some inmates feel there might be many, and this kept the thing going, the pot boiling, and I am presuming this is what happened. I have no personal knowledge that this is what he said or did.

Q. You are presuming that strong advocacy were some of the acts Mr. Lucas and Mr. Newkirk did on Monday and Tuesday? A. Yes.

Q. And this is what kept the pot boiling and kept the tension between the groups? A. That's right. I might mention—

Q. If you would just answer the questions, please.

Who did you speak to when you called Albany? A. Gene Phillips.

Q. What did you state to him? A. I told him we had a problem at Wallkill and it may be necessary to transfer some inmates to another institution, and I explained to him what the problem was.

Q. What did you tell him was the problem? (545) A. I told him that we had a group of inmates who were sponsoring an inmate union and they had circulated the petition and we felt that was the end of it, but it wasn't, that the problem was continuing, that there was a great deal of tension and friction, and we felt the only way it was going to be corrected was to move some of the men out without any kind of disciplinary action taken.

Q. What did Mr. Phillips say? A. He told me he could call me back. I gave him the names and he called back and told me I could move them.

Q. When did he call you back? A. I believe it was on Thursday—no, I believe Wednesday afternoon, because we moved the group to Clinton on Tuesday.

Q. Your call was made probably late Tuesday afternoon? A. Late Tuesday or early Wednesday. It probably was Wednesday.

Q. You think the court was Wednesday morning? A. It could have been. I am not certain.

Q. Just again to make it clear, prior to that call, if it was Wednesday morning, you didn't have further (546) discussions with persons at Wallkill, correction officials, about who should be transferred? A. I probably discussed it with Mr. O'Mara. When I come to work in the morning, Mr. O'Mara and Mr. Otis come to my office to discuss problems they have.

Q. You think you may have had a discussion with Mr. O'Mara on Wednesday morning, June 7th? A. Possibly, or Mr. Otis.

Q. Mr. Otis had just returned? A. Right.

Q. And he had no knowledge of the whole situation? A. That's correct.

Q. Do you recall what was stated at that conversation with Mr. O'Mara on Wednesday morning? A. Nothing, except that it would be probably necessary to move them and how we were going to move them.

Q. You were concerned with the mechanics of the transfer? A. That's correct.

Q. There was nothing further you and Mr. O'Mara observed on entering the institution on Wednesday morning that altered your initial decision? A. Only that the tension was quite apparent and (547) we would have to do something about it.

Q. Again you had no first-hand information as to what this tension was? A. No.

Q. And you believe you received a call back from Mr. Phillips on Wednesday afternoon? A. Some time Wednesday, advising me that the transfer had been approved and where they were going to go, because they select the institution that you transfer to. We have nothing to do with that.

Q. At that time he told you that Mr. Newkirk and Mr. Lucas were heading for Clinton? A. And Mr. Rosario.

Q. And Mr. Rodriguez and Mr. Oliver were going to Auburn? A. Yes.

Q. Did you have any further contact with Albany after that concerning these transfers? A. No.

Q. So the only contact with Albany was your one phone call on Wednesday morning, you believe, and the return call on Wednesday afternoon? A. Right.

Q. I show you Exhibits 7 through 11 in evidence. (548) When were these prepared? A. Probably Mr. Otis upon his return to duty. I don't know the exact time.

Q. Do you recall why Mr. Otis prepared these? A. It is necessary to prepare them. You may get verbal permission in an emergency, but it has to be followed by—this is unusual. Generally it is done by correspondence. It was done by phone in this case and there had to be supporting documents to consummate the transaction.

Q. These were prepared to go to Albany? A. That's right.

Q. And they were the official record of the reasons for the transfers? A. Right.

Q. And so that these reports were just recording for the books, if you will, the reasons you had discussed, is that right? A. Yes.

Q. Looking at Exhibit 8, this is one of those reports that we were talking about that was prepared for Albany giving the reason for the transfers (handling)? A. Yes.

Q. This is a report dated June 8, 1972, to Mr. (549) Butler from Mr. Otis. Why is this addressed to you if it was supposed to go to Albany? A. All of them are transmitted with a facing letter to the Albany office. It came from him and I transmitted it.

Q. The subject is No. 9704, James Newkirk, Jr., and it states:

"A petition relative to a prisoners' labor union was widely circulated among the population for signatures on Friday evening, June 2nd, and Saturday, June 3, 1972. No. 9273, Sostre, Martin, was the prime mover and instigator. No. 9704, Newkirk, has been actively securing signatures for the petition. I recommend that Newkirk be transferred to another institution because he is disrupting the orderly operation of the institution."

And then the last paragraph:

"As a result of the petition being circulated, there has been a division between the inmate population and there is great animosity between that group which circulated the petition and the Inmate Liaison Committee and their followers. We cannot permit an altercation to develop."

This report you believe was prepared—do (550) you know when it was prepared, Tuesday or Wednesday? A. I don't believe it was prepared on Tuesday. If he didn't come back until the Wednesday, he couldn't prepare it on Tuesday.

Q. Wednesday, then, June 7th.

Again, as I read, is it true, then, that the major factual—the only factual or specific incident they mention Newkirk was involved in was the one of securing signatures for the petition? A. That is what he stated there. But he also stated in his last paragraph the basic reason for requesting the transfer.

Q. The altercation that might develop? A. Yes.

Q. And you say this was developing because of the circulation? A. Yes.

Q. And because the altercation was developing as a result of the circulation and because Mr. Newkirk was involved in that circulation you felt Mr. Newkirk should be transferred? A. Not just because he circulated the petition but because of his continuing activity beyond the circulation of the petition itself.

(551) Q. This document doesn't indicate anything about that continuing activity? A. No.

Q. Did you feel you should tell Albany the real reasons for transferring— A. I talked to them by phone and I am not interested in any men losing time, but I merely felt that in the best interests of the institution and themselves it was necessary to move them out.

Q. You felt that if you gave the real reasons for the transfers of these men they might result in them losing time? A. I wasn't taking disciplinary action. I didn't want an altercation between rival factions at Wallkill.

Q. I want to get at why you didn't include the real reasons for the transfer. A. That was Mr. Otis' report to me. I submitted it to Albany. I had discussed it with them. I didn't perhaps indicate by letter but I did indicate I wanted no disciplinary action taken and I felt this was a measure that had to be taken quickly.

Q. What did you indicate to Albany exactly that Mr. Newkirk had done besides circulating the petition? (552) A. I told them I thought this thing would resolve itself perhaps earlier than at the present time, but it didn't, and this continued and I felt something had to be done. We had another movie coming up Saturday and I was fearful of trouble, and so were the other supervisors, and we decided to do something. As soon as these men left the institution it stopped immediately.

Q. After they left the institution there was no further talk about the union, was there? A. None whatsoever.

Q. But you did not state to Albany in any of the conversations any specific acts or any actions they were involved in except the circulation of the petition? A. From the information I had gotten from the supervisors, I felt this was the necessary step to take.

Q. Albany did not request reasons why the men were to be transferred? A. No. They permitted me to make the selection.

Q. They did not ask for further reasons? A. No.

Q. And it states in this report that "As a result (553) of the petition being circulated, there has been a division," and you are stating that is not exactly the case, it is a result— A. This is what created a division between the Liaison Committee and the population—

Q. The circulation of the petition? A. Not just the circulation of the petition. The people who were promoting it and trying to sell it to the population, more so than just the circulation—the circulation was over and done with—

Q. When you say as a result of the petition being circulated there was a division, Mr. Otis should have said as a result of the petition and other activities, is that right? A. Possibly.

Q. Is that right or not? A. Other activities relating to the circulation of the petition.

Q. Such as telling people that it is a good idea? A. Yes.

[At this time the Court recessed for lunch.]

(556) AFTERNOON SESSION

(2:30 p.m.)

The Court: Good afternoon.

Supernntendent Butler, would you resume the stand, please.

Harold N. Butler resumed.

Cross Examination continued by Mr. Pochoda:

Q. We have been talking about Plaintiffs' Exhibit 9, Mr. Butler, which I will show to you again. I would like to show you Plaintiffs' Exhibit 8 also (handing).

Exhibit 8 was also prepared by Mr. Otis, is that right? A. Yes, both of these were prepared by Mr. Otis.

Q. And it would be true that it would be prepared in the same manner and for generally the same reasons as Plaintiffs' Exhibit 9? A. Right.

Q. Is it true that the first two sentences of the first paragraph are identical in both of those reports?

Perhaps it would be easier if I read one of them and you could follow it. I will read from Exhibit 8:

(557) "A petition relative to a prisons' labor union was widely circulated among the population for signatures on Friday evening, June 2nd, and Saturday, June 3, 1972."

Is that the same as Exhibit 9? A. Yes.

Q. "No. 9273, Sostre, Martin, was the prime mover and instigator."

Is that the same? A. Yes.

Q. Then there is a different sentence relating to Mr. Lucas, and one to Mr. Newkirk.

Going to the second paragraph:

"I recommend that Newkirk be transferred to another institution because he is disrupting the orderly operation of the institution."

Is that the same in Exhibit 9? A. No. This doesn't indicate the inmate by name. It says "this inmate."

Q. Is the rest of the language the same? A. Right.

Q. Then I read from the third paragraph—that is the extent of the second paragraph? A. Yes.

(558) Q. "As a result of the petition being circulated there has been a division between the inmate population and there is great animosity between that group which circulated the petition and the Inmate Liaison Committee and their followers. We cannot permit an altercation to develop."

Is that the same in Exhibit 9? A. Yes.

Q. The only differences are in Exhibit 8 it refers, at the end of the first paragraph, and states: "9704, Newkirk, has been actively securing signatures for the petition," while in Exhibit 9 it states: "Reports indicate 9659, Lucas, Cornelius, and 9273, Sostre, in consort with Legal Aid, instigated the petition."

Those are the only differences? A. Yes.

Q. Isn't it also true that that language came directly from a prior exhibit, which I will show you, and that is Exhibit 12, which is a report from Mr. O'Mara, and I show you the second page, and would you please read what it states next to Mr. Newkirk's name. A. "Reported by Lieutenant Connolly as actively involved in securing signatures."

Q. That is slightly different from Exhibit 8? (559) A. Yes.

Q. Would you read what it states after Lucas name? A. "Reports indicate he and Sostre in consort with Legal Aid instigated petition."

Q. That is the same as appears in Exhibit 9? A. That's correct.

Q. I would like you, if you could, to quickly look at Exhibits 7, 10 and 11. These are also reports from Mr. Otis. Exhibit 7, the subject is Roman Rosario and 10 is Carl Oliver and David Rodriguez, and Exhibit 11 is just David Rodriguez.

The first two sentences—

Mr. Hoffman: I would like to object, your Honor. These documents are in evidence. If counsel wishes to show similarity of language, I don't think he has to ask the witness to read these documents.

The Court: That's correct. The documents are in evidence and they speak for themselves, and before rendering a decision the court will not only read the documents but will accept any comments in the form of posttrial briefs or findings and conclusions from counsel which should specifically direct the court's attention to either similarities or dissimilarities.

(560) Mr. Pochoda: I will withdraw the last question, your Honor.

By Mr. Pochoda:

Q. I would like to show you again Exhibit 13. This is the one referred to where Mr. O'Mara made the list of persons in order of who he felt should be transferred? A. Right.

Q. Can you tell us the date Mr. Sostre was transferred from the institution? A. I don't have the exact date, but it was some time later.

Q. Do you know approximately, in days or weeks, how much later it was? A. Several months—at least a month, I would presume.

Q. Can you tell us why you decided to transfer five inmates and not six inmates? A. We had requested the transfer of Martin Sostre on numerous occasions for disciplinary actions, for numerous reasons, and the department decided not to transfer him because they felt that he could create less problems in Wallkill than in any other institution of the department.

(561) Q. The department felt it was less likely he would create a problem in Wallkill? A. Yes. We indicated he was one of the parties responsible for this, but they did not choose to transfer him.

Q. You asked for the first six names on the list to be transferred and they okayed only the five without Mr. Sostre? A. Right.

Q. Why did you not ask for the first seven names on this list to be transferred? A. Because after discussing it we decided that perhaps he was not as actively involved following the circulation as the others.

The Court: Indicating who, when you say "he"?

The Witness: Passanante is one, Kenny is another.

The Court: When you said "he" you would have meant "they," and you meant those two individuals?

The Witness: Yes.

By Mr. Pochoda:

Q. As I recall your testimony this morning you stated that you did not know at the time you discussed this (562) Exhibit 13 what the differences in Mr. Kenny's behavior was and Mr. Lucas' behavior was in any respects from Friday through Wednesday. A. I did not personally. I had to discuss this with my supervisory staff because they are the ones in contact with the officers and who had an opportunity to observe the inmates.

Q. You, I assume, were referring to the conversations with Mr. O'Mara and Mr. Connolly? A. That's correct.

Q. And they said to you that Mr. Kenny was not as actively involved as Mr. Newkirk, for example? A. They listed them in the order of performance for transfer.

Q. And you decided to transfer only Nos. 1 through 6, and not 7 or 8? A. Two through 6, I believe.

Q. Well, Mr. Sostre was denied. Did you ever consider transferring only 2 through 5 and not Mr. Oliver, for example? A. No. These were the names submitted to me and we discussed it and decided out of the eight we would ask for the five to be transferred.

Q. You felt the removal of these five would reduce (563) tensions? A. We thought it would, yes.

Q. Did you discuss at all the possibility that removal of only four people might reduce the tensions in the same manner? A. No. We wanted to know how many we would have to remove in order to quiet the institution.

Q. And you decided you would have to remove about five to quiet the institution? A. This is what we decided upon.

Q. And again you do not know what Mr. Rodriguez did any different from what Mr. Oliver did? A. That's correct.

Q. You just felt the number five would be enough to handle this particular situation? A. No, I just think it was considered by those who I depended upon for information that his attempt to influence the population was not as great as the others.

Q. Mr. Rodriguez and Mr. Oliver were both transferred— A. I am talking about Mr. Kenny and Mr. Passanante. We graded them in order of importance for transfer.

Q. I see. You again can give no specific examples (564) as to what Mr. Oliver did that Mr. Kenny did not do? A. No, I cannot.

Q. And you do not know in any of these conversations, loud talks, or whatever, that took place who might have started the conversation? A. No.

Q. You don't know if it was started by somebody from the Liaison Committee or somebody on this list?

> Mr. Hoffman: The witness said he doesn't know, your Honor.
>
> The Court: I submit the answer was given. Do you press the last question?
>
> Mr. Pachoda: No. I withdraw it, your Honor.

By Mr. Pachoda:

Q. You stated that you took into account some of the prior information that you had about the individuals who were recommended for transfer prior to June 2nd and that information was their relationship to Mr. Sostre. A. Only one individual. Sostre himself was the only one who had been recommended to transfer prior to June 6th.

Q. But you also stated that when evaluating the transfers of Mr. Lucas and Mr. Newkirk you took into con- (565) sideration their relationship with Mr. Sostre? A. Yes, we did.

Q. Was this information written on their records in any way, this particular piece of information about their relationship to Mr. Sostre? A. There was a time in the institution when daily reports were submitted concerning the association of Mr. Sostre because we considered him a prime source of trouble.

Q. And you have some daily reports that indicate there is a relationship between Mr. Newkirk and Mr. Sostre? A. There may be some prior reports to that extent. I got it from the supervising officers who indicated to me that there had been a frequency of visitation by these people and Mr. Sostre in his cell, on the cell blocks, and so forth.

Q. It is also your testimony that Mr. Sostre was actively speaking to a number of inmates? A. Yes.

Q. When you were making the decision to transfer these inmates did you take into account their disciplinary records at the institution? A. Yes.

(566) Q. Didn't they have excellent disciplinary records at the institution? A. Yes, they did.

Q. And in fact they had never had to be responsible to or warned by any persons—

> Mr. Pachoda: I will withdraw that.

Q. Besides the disciplinary records, did they have problems that resulted in any discussions or warnings? A. Some of them had had minor—I am not exactly certain, but there were minor problems, I believe, that they had been involved in, but not of any major proportion.

Q. So their records did not indicate any problems at the institution at all? A. That's correct.

Q. And their records did not indicate that they had not adjusted well to the institution? A. That's right.

Q. And in fact they were participating fully in the institution's programs? A. Some of them were involved in programs, but I think not all of them. I don't believe Mr. Newkirk was at this time involved in a program, although he had (567) been.

Q. Well, he had been working full time? A. He was working full time.

Q. And he was playing in the band? A. Yes.

Q. So he was active in activities that Wallkill offered? A. Right.

Q. Did you attempt to inquire into the past records of some of the inmates on the Liaison Committee as to their propensity for getting into trouble or violence or so forth? A. I don't think it was greater or less even than the other inmates. We have very few disciplinary problems in the institution.

Q. When you had these discussions with Mr. O'Mara, did you inquire as to the possible participation of Mr. Barnes, for example, in some vocal discussions? A. No, I did not.

Q. You did not consider that relevant at this point to the transfer? A. I considered the fact that the Liaison Committee was an elected group of people, elected by the inmate population in the institution, not by myself.

(568) Q. Wasn't it possible through that even if elected their activities might have been something you disapproved of? A. It's possible.

Q. But you inquired only as to the persons involved with the union in terms of this particular conflict? A. From the reports I got from the supervisors, the subordinate supervisors, was that they were pressing the action. The proponents or those who supported the union suggestion were the ones that were agitating, creating the problems. This is the way it was related to me.

Q. Did you attempt at any time to talk to any of the individuals who were listed on Exhibit 13? A. No.

Q. Did you attempt to talk to any person in the Liaison Committee to find out what was going on? A. No, not with the exception of talking to Barnes that night.

Q. That was the one time on the phone? A. That's correct.

Mr. Pachoda: Please mark this for identification.

(569) (Plaintiffs' Exhibit 30 was marked for identification.)

By Mr. Pachoda:

Q. I show you Plaintiffs' Exhibit 30 for identification and ask you if you can describe what that is. A. This is a report on the misbehavior or the disciplinary report on Warren Barnes.

Mr. Pachoda: I would like to offer this into evidence at this time.

(Pause.)

Mr. Hoffman: Your Honor, I notice that the last entry on this document is April 5, 1972, which is approximately two months before the incidents involved in this lawsuit and I object to the introduction of this document on the grounds that it is immaterial and irrelevant to the issues before the court.

The Court: May I see the document, please?

(Handed to court.)

(Pause.)

The Court: I would rule that the objection would go to the weight of the document and therefore I will overrule the objection and admit the document into evidence and, having done so, I will note I am aware that it covers a period which appears to have begun in 1968 (570) and the last entry appears to be some month, month and a half prior to the first of the dates which are under discussion here. The last entry is April of 1972, with testimony having been given here as to events which seemed to have begun in May of 1972.

With that observation I will overrule the objection and admit Plaintiffs' Exhibit 30 into evidence.

(Plaintiffs' Exhibit 30 was received in evidence.)

By Mr. Pachoda:

Q. Mr. Butler, looking at Exhibit 30, which has just been received into evidence, it states that on 4/5/72—

The Court: I might interject that this exhibit speaks for itself, and I have not interjected previously, but I would suggest that if you have to quote from the exhibit to ask a question that is one thing, but it is not necessary for you to read the exhibit, which speaks for itself, or to ask the witness to characterize it.

Mr. Pachoda: Yes, sir.

Q. It states that on 4/5/72 Mr. Barnes, after an Adjustment Committee appearance, was given the sentence or sanction, whatever, of one week confinement to cell (571) and 30 days loss of commissary privileges.

I take it that is a fairly serious punishment at Wallkill? A. No.

Q. Is that an average punishment? A. Yes. There is no locked cell and he is confined to his cell area, and the lack of commissary privilege, although it might be something they dislike, I would say this is a fairly common method of punishing.

Q. And that would be the same then for his sentence on 4/5/72, one week confinement for the offense of lying to the Adjustment Committee, is that right? A. That perhaps would be fairly serious.

Q. In evaluating your decision as to transferring these two plaintiffs did you make any calls to any of the other guards in the institution that they had come into contact with? I take it you did not call the instructor in the auto mechanic shop about Mr. Newkirk? A. No.

Q. You did not call the Catholic chaplain about Mr. Lucas? No.

Mr. Hoffman: Your Honor, I object. The superintendent testified that he relied on the reports (572) of his subordinates.

The Court: Well, I will permit the answers interposed to stand, if counsel is finished with this line of questioning, and we can go on.

Mr. Pachoda: I had, your Honor.

The Court: That's fine. The objection is overruled.

Mr. Pachoda: I would like this marked for identification, please.

(Plaintiffs' Exhibit 31 was marked for identification.)

By Mr. Pachoda:

Q. I show you Plaintiffs' Exhibit 31 for identification and ask you if you have seen that before. A. Yes. I wrote this letter.

Q. On the date of July 13, 1972? A. I presume so. I don't remember the date that accurately but it is on the letter and I presume that is an accurate date.

> Mr. Pachoda: I would like to offer this at this time.
> (Pause.)
> Mr. Hoffman: No objection.
>
> (Plaintiffs' Exhibit 31 was received in evidence.) (573)

By Mr. Pachoda:

Q. I take it that at some point subsequent to the transfers we have been discussing you received some new information about Mr. Rodriguez? A. I received a long, lengthy letter from inmate Rodriguez from Auburn, and we had continued to investigate the situation even after the transfers, and I came to the conclusion, after talking with Assistant Deputy Superintendent O'Mara and Mr. Connolly that perhaps Rodriguez was not as actively involved in the conditions of the circulation of the petition as was originally thought and I didn't want him to suffer any penalty or punishment as a result of this, and I went beyond this. I even, since he wanted to get closer to New York—I asked if they would consider transferring him to Green Haven so that his mother could visit more easily, and he was subsequently transferred there.

Q. You had never received any information, if I recall correctly, that Mr. Rodriguez himself had been involved in the circulation of the petition.

I show you Exhibits 2 and 3 and Mr. O'Mara's report, and the only name that doesn't appear is Mr. Rodriguez'. (574) A. Yes, on this one (indicating).

Q. And the second one? A. This is from Koch. Koch only mentions one and Connolly only mentions five.

> The Court: Let the record reflect that the witness is referring to Plaintiffs' Exhibits 2 and 3 in evidence.

Q. Isn't it true that Exhibit 3 mentions both Mr. Lucas and Mr. Passamante? A. Oh, yes, Lucas and Passanante.

Q. And in Exhibit 3 Mr. Connolly mentions five names? A. Yes.

Q. Those seven of the eight names, the only one missing is Mr. Rodriguez? A. Yes.

Q. You had not received information that Mr. Rodriguez was circulating the petition on Friday night, June 2nd? A. I don't recall if I did. If I did, it was an oral report. But I did receive a report that he was active in supporting the union after the petitions had been circulated and in the days following.

Q. After the transfer you received this lengthy (575) letter from Mr. Rodriguez? A. Yes.

Q. And then there were continuing investigations and you discovered that Mr. Rodriguez was not as active as you had first thought? A. Rodriguez had been rather active in his association with the Spanish-speaking group in the institution, and this was his involvement, in so far as we were concerned, with the Spanish-speaking population.

Q. You felt Mr. Rodriguez was the liaison between Mr. Sostre and the Spanish-speaking population? A. Yes.

Q. And on that basis you felt he was involved with the union— A. Not on that basis alone.

Q. I take it that if you were aware of this further information about Mr. Rodriguez prior to the transfers, Mr. Rodriguez might not have been transferred. A. He might not have been.

Q. After you received this information through these continuing investigations you felt it was important to write this letter to Mr. Henderson, the superintendent at Auburn? (576) A. Yes.

Mr. Hoffman: Your Honor, I object to any further questions on this. Rodriguez is no longer before the court.

The Court: I have reason to think counsel has finished his inquiries relative to Mr. Rodriguez.

Mr. Pachoda: I have two questions and I think it is relevant, your Honor.

The Court: Let me hear the questions.

By Mr. Pachoda:

Q. You also stated in the letter of July 13, 1972 that this new information you received should be made available to the persons who were preparing the parole summary for Mr. Rodriguez?

The Court: The letter speaks for itself.

Q. You felt it was important for the people who were going to be judging whether Mr. Rodiriguez should get parole or not should have this information? A. I didn't think it would hurt him to have this in his file.

Q. It was possible that the Parole Board would hold it against him—

Mr. Hoffman: Objection.

The Court: Sustained. Have the record note (577) that the last objection was sustained and the answer can be stricken.

Q. Returning to the week of June 3, 1972, at the institution, your decision to transfer was made early in that week. It is true, is it not, that for the rest of the week Mr. Lucas and Mr. Newkirk performed their usual duties and routines at the institution? A. I don't say the decision was made early in the week. The investigation transpired early in

the week but the decision was not made to transfer until Wednesday.

Q. After Wednesday it is true Mr. Newkirk and Mr. Lucas were performing their regular activities at the institution? A. Yes.

Q. Mr. Newkirk was driving his truck as usual? A. Yes.

Q. Going in and out of the prison grounds as usual? A. Yes.

Q. You did not attempt to interrupt those activities? A. Absolutely not.

Q. You had no reason to believe Mr. Newkirk, (578) going about in the same manner, would create problems for the institution? A. Not unless I advised him he would be transferred.

Q. You felt if you told him he would be transferred something might occur? A. I feel this is always possible.

Q. Specifically in terms of Mr. Newkirk's case, did you feel he might try to escape? A. I don't believe Mr. Newkirk was an escape risk or he wouldn't have had the job or assignment had, but sometimes people act unusual under certain conditions.

Q. Did you have any specific evidence that Mr. Newkirk would act unusual in light of his record, Mr. Newkirk's record, when informed that he was going to be transferred? A. I would say there would be serious doubt in my mind as to how he would react if this information were given to him. He is a human being.

Q. I am talking in terms of his record at Wallkill and other institutions. Is there anything you looked at that you were concerned about in this particular case and therefore did not want to tell him? (579) A. Not any more than any other inmate, excepting that he was outside the walls working, for one thing. His was an outside assignment, driving throughout the area, and, of course, if he decided not to stay, he could very easily leave.

Q. And I assume the same is true for Mr. Lucas, there was nothing in his record that made you feel you were taking some risk in terms of telling him he would be transferred? A. All of the men were selected and brought there because they generally had pretty good records. So I would say this applies to almost every man in the institution. But as a precautionary measure this is the way it is generally handled.

Q. I understand that. I take it also that at no point during that week, from Monday, the 5th, until the 8th, did you speak to the population in any way about the union situation? A. No, I did not.

Q. Or make any written or oral announcements to the the population? A. No, I did not.

Q. Did not take any steps similar to the ones you described when you thought there would be racial conflict? (580) A. No.

Q. You did not try to arrange a meeting between the Liaison Committee and the people you identified as involved with the union? A. I didn't want to pit one group against the other.

Q. You did not feel it was possible that a meeting where you were present could resolve some of the differences? A. I doubt that the outcome would have been successful.

Q. You did not attempt it? A. No, I didn't.

Q. I take it you did not take any steps whatsoever to isolate any of these inmates in the rooms available, I believe, in the hospital, either Mr. Lucas or Mr. Newkirk, during that week? A. We have only two rooms in the hospital and they are usually reserved for persons who are dangerous to themselves or to other people, such as a person who has been considered psychotic or perhaps two people engaged in a violent assault and we have to separate them until we can move them out. Those rooms are not used at any other time.

(581) Q. You did not consider Mr. Lucas and Mr. Newkirk dangerous to other persons? A. No.

Q. You did not feel they were threatened physically? A. No.

Q. Or that they were a threat to anybody else? A. No, I did not.

Q. You also testified, I believe, on direct that you had no participation in the decision as to where Mr. Lucas or Mr. Newkirk were going to be sent? A. That's right.

Q. You did not in any way attempt to influence that decision, did you? A. No, sir.

Q. You did not attempt to try—

> Mr. Pachoda: I withdraw the question. You did not feel it was your duty to attempt to perhaps allow them to be as close to New York City as possible even though they had left Wallkill?
>
> Mr. Hoffman: I object to that.
>
> The Court: Sustained.

Q. I take it you had no preference as to where they were sent? (582) A. Well, I generally, in all requests for transfer—in all requests I am not permitted to indicate the institution I would like them to be transferred to. This is a decision to be made by Albany, because of vocation, because of the program. I am not acquainted with this and I am not permitted to do this.

Q. You testified there had been numerous petitions in the past that were passed around at Wallkill? A. Yes.

Q. Are you aware of a petition that was passed around in October of 1971 that had to do mostly with various laws that affected the equal protection of prisoners? A. Yes.

> Mr. Pachoda: I would like this marked for identification, please.

(Plaintiffs' Exhibit 32 was marked for identification.)

Q. I show you Plaintiffs' Exhibit 32 for identification and ask you if this is the petition to which you just referred? A. I never saw the petition. I was advised a petition had been taken up and sent to the commissioner's office. The commissioner talked to me about it. (583) I did not see it go out. I merely knew it was being circulated. I did not have a copy of the petition. It was not presented to me.

Q. You were aware, were you not, that Martin Sostre was involved in that petition? A. Yes.

Q. You were aware Mr. Larry Usher was involved in that petition? A. No.

Q. Were you aware Mr. Gary Burroughs was involved in that petition? A. No.

Mr. Hoffman: I object on the grounds of relevance, your Honor.

The Court: Yes, I don't see the relevance unless you get to the point of the plaintiffs in this proceeding having been involved in the petition. I think the fact that others not party to this lawsuit were involved in a prior petition is not germane to the issues here.

Mr. Pachoda: I am not going to offer it at that point, your Honor, and I won't go into it at this juncture.

Q. Just to turn briefly to a couple of other (584) matters, Mr. Butler—

Mr. Pachoda: May this be marked for identification, please.

(Plaintiffs' Exhibit 33 was marked for identification.)

By Mr. Pachoda:

Q. I show you Plaitniffs' Exhibit 33 and ask you if you are familiar with this document? A. Yes.

Q. Can you describe what that is? A. This is a description of the Wallkill program, briefly. I have not read it right now, but I think it is fairly accurate.

Q. You have seen it before? A. Yes.

Mr. Pachoda: I would like now to introduce this into evidence.

(Pause.)

Mr. Hoffman: No objection.

(Plaintiffs' Exhibit 33 was received in evidence.)

The Court: As I recall, a copy of Plaintiffs' Exhibit 33, which is now in evidence, was presented to the court previously.

(585) Mr. Pachoda: Yes, your Honor.

The Court: Is this the same document?

Mr. Pachoda : Yes.

The Court: It was annexed to the initial order to show cause?

Mr. Pachoda: That is correct, your Honor.

The Court: I thought it looked familiar and I want to be sure that there weren't perhaps two Wallkill stories.

By Mr. Pachoda:

Q. I take it that one of the main or primary aims of Wallkill is to prepare a man for the day he will leave the prison? A. I hope so.

Q. And that many of the innovative programs are geared to give him the skills and techniques he needs to remain on the outside? A. Right.

Q. And it is true, is it not, that one of the great problems for prison administrators is the recidivism rate? A. Yes.

Q. I assume you feel the special programs by Wallkill are important in reducing that rate? (586) A. Yes.

Q. I assume you feel the special programs by Wallkill are important in reducing that rate?

> Mr. Hoffman: I object to that question, your Honor. I don't see the relevance of that to the issues in this case.
>
> The Court: I will let the witness answer the question. He is in my judgment an expert in this area and I see no harm in permitting him to answer. I am hopeful that we won't get too far afield.

A. That is the object of the program.

Q. As you stated before, the full scope of these programs is not available at the maximum security institutions, is it? A. There are programs available, perhaps not as intensive or extensive as ours but there are programs in every institution that I have ever worked in.

Q. I have a few questions about the Liaison Committee. When was this started at the Wallkill Facility? A. About a year ago. I don't know the exact date, but it was approximately a year ago.

Q. This is a body of inmates, I take it, that are elected? (587) A. Yes.

Q. And they meet with you from time to time? A. At least once a month, or more often if it is deemed necessary.

Q. And you consider them, I take it, a conduit between yourself and other inmates? A. Yes.

Q. And they will speak for you to other inmates, is that right? A. Well, they can relay information that I would

like to have relayed to the other inmates, but I wouldn't say they speak for me.

Q. And they will relay information from the population to yourself? A. That's correct.

Q. They cannot deal with specific grievances of a specific inmate, can they? A. No. But they sometimes bring them to my attention.

Q. But they are not supposed to deal with specific grievances? A. Right.

Q. Is that correct? A. Right.

(588) Q. And they have no rule-making power, do they? A. No.

Q. They can relay suggestions as to what should occur, but the implementation is up to you entirely? A. We discuss it. We discuss the pros and cons of introducing a new program or making changes in the existing program. So I would say they assist in making policy, even though they don't make it.

Q. But the final decision-making is up to you to veto or to implement? A. That's correct.

Q. And the Liaison Committee has no power to write any regulations that are enforced throughout the institutions? A. That is true, but they may assist in formulating new ones or removing old ones.

Q. It is also true that any member of the Liaison Committee may be removed at your will? A. It is possible, but it has never happened.

Q. But it is possible? A. It is possible—

> Mr. Pachoda: I would like this marked for identification, please.

> (Plaintiffs' Exhibit 34 was marked for identification.) (589)

Q. I show you Plaintiffs' Exhibit 34 for identification and ask you if you recognize that document. A. That is the original constitution of the Liaison Committee, but I don't believe it is the one in existence at the present time.

The Court: Is that constitution, Mr. Butler, the one you hold in your hand—was it in force in May and June of 1972?

The Witness: Yes.

Mr. Pachoda: I would introduce this into evidence at this time.

(Pause.)

A. It would be difficult for me to say it is identical without comparing it with the exact constitution.

Mr. Hoffman: Your Honor, I object to the introduction of this document on the grounds that we don't have the authors of the document here.

The Court: May I see the document?

Mr. Pachoda: Yes, sir (handing).

(Pause.)

The Court: Mr. Hoffman, do you have any other objection to the introduction of this document, specifically as to its authenticity?

(590) Mr. Hoffman: I am not so much concerned about authenticity, but there is no testimony that Superintendent Butler was responsible for the preparation of this document. This document, it seems to me, was prepared by people outside of the court and perhaps outside of this lawsuit.

The Court: Perhaps you would like to have a brief voir dire on the subject.

Voir Dire Examination by Mr. Hoffman:

Q. Superintendent Butler, were you active in the preparation of this document? A. I assigned an officer or a su-

pervisor to assist the inmates on the Liaison Committee in preparing a constitution and a set of bylaws and it took a long period of time and there were a great many differences of opinion, and the final document that was submitted and rejected by the Albany office as being too liberal, and they sent one of the attorneys to the institution to assist the Liaison Committee in preparing a proper document.

I don't know at which stage of the game this constitution was introduced because there were a number of them that were submitted, each one slightly different than the others. We operated without a constitution until just recently, when a lawyer was sent there from the (591) Albany office to assist the Liaison Committee in coming up with an acceptable document. This generally refers to the conduct of the Liaison Committee of June 2nd.

The Court: I gather from your answer to the questions that have been asked by Mr. Hoffman that you yourself are not certain that this document which has been marked Plaintiffs' Exhibit 34 for identification was the actual constitution which was made effective and which was in effect in May and June of 1972.

The Witness: It could be and it is not necessarily. There may have been another one.

The Court: Do you have any document or documents with you today with which you could compare this document to ascertain whether it does represent the constitution which was in effect in May and June of 1972?

The Witness: No, I don't, your Honor.

Mr. Pachoda: Your Honor, in light of the answers I would withdraw the offer in evidence.

The Witness: I could provide you with one, if you want it.

The Court: So that is withdrawn. That is objected to and withdrawn.

(592) By Mr. Pachoda:

Q. It is true, is it not, that you still retain the power to remove any member of the Inmate Liaison Committee? A. Yes.

Q. And that power you had on June 2, 1972? A. Yes. But I would like to again say it has never occurred.

Q. You stated that it was only recently that the Liaison Committee obtained a constitution that was in force? A. We submitted the original constitution, or the final constitution that was drafted, and it seemed to be acceptable to me, to the Albany office, and they disapproved of it. They decided to send legal representation down to assist in making up a legal document, which they did in the past two weeks.

Q. Is there a procedure for ratifying the constitution? A. No. It will be approved by the commissioner, without doubt, and returned to us.

Q. Does it have to be ratified by inmates at the institution? A. No.

(593) Q. You stated that for a period of years you acted as a trouble-shooter for the Department of Corrections? A. Yes.

Q. What years were they? A. The fall of 1965 until the spring of 1971.

Q. During that period of some six years you had to go to a number of institutions to quell possible disturbances or actual disturbances? A. Yes.

Q. Do you know the names of those institutions? A. I could tell you some of them: Dannemora State Hospital, Elmira Reformatory, Bedford Correctional Facility, Napanoch, Northeastern Correctional Facility, the Auburn Correctional Facility.

Those are generally—

Q. You did not go to Wallkill? A. No.

Q. You did not have to go to Wallkill for that? A. No.

Q. You have been at Wallkill for the past year and a half? A. As superintendent.

Q. And during that time you have not had to deal with a disturbance, riot or strike of any nature, have (594) you? A. When I was assigned to Elmira I thought the situation was so tense at Wallkill on two occasions that I came back to the institution because I thought that trouble was going to erupt.

Q. At that point did the inmates engage in any concerted strike or sitdown action or — A. No. There had been a great many reports emanating from the institution that there would be trouble there, that it was imminent.

Q. But in the past eight years, to your knowledge, Wallkill has been relatively free— A. Right.

Q. And has escaped the rebellions and uprisings that have taken place at practically every other institution in New York State? A. We have had escapes there.

Q. I am talking about inmate activities within the institution. A. No, we have not had any.

Q. None? A. No.

Mr. Pachoda: No further questions.

The Court: Mrs. Walker, do you have any (595) questions you want to put to Superintendent Butler?

Mrs. Walker: No, your Honor, I do not.

The Court: Mr. Hoffman, you are recognized for redirect.

Redirect Examination by Mr. Hoffman:

Q. You were questioned about your attitude toward an inmate labor union. Would you tell the court what problems you believe you would encounter at Wallkill if an inmate labor union were recognized? A. I think a union of inmates of any kind would be very difficult to deal with.

Secondly, I think that the basic tool of labor unions to achieve their demands is the strike process, and I can't imagine a strike in a correctional institution. I can't imagine how we could possibly cope with it or what penalties could be involved for those who did strike, since these men are already in institutions and have very little freedom to lose by violating the law again. I feel it would be a chaotic situation.

We now have employee unions that are not supposed to strike but they strike and we are troubled by just running the facilities.

(596) Q. Can you tell the court any specific accomplishments that the Inmate Liaison Committee was responsible for in and around the period we are discussing in this lawsuit? A. I think they have—

> Mr. Pachoda: I would object on the grounds of relevance, your Honor.
>
> The Court: I permitted substantial latitude on cross examination and I think that a couple of areas were explored, some in depth and some briefly, and I would be inclined to permit this inquiry on redirect examination.
>
> We are also, of course, sitting nonjury and I am prepared to listen to this question anyway.

A. I think that they have obtained a great many benefits for the inmate population. I can name some of them.

We have never permitted pepper on the tables in any inmate institution or correctional institution during all my years, and we now have pepper on the tables. We have all the milk—milk is now permitted; they are permitted to drink all they want. It is placed in pitchers on the tables.

Each inmate is permitted to purchase his (597) own personal radio and listen to any station that he wishes, unmonitored. We have made changes in the menus. We have made changes in the recreational program, which they had requested and we felt were very, very good. We made changes in the cell lighting.

We have made changes in the dress of the inmates themselves. We have just recently changed the procedure that disturbed them very much about checking their visitors in in the front parking lots. They felt this delayed their visits and we abolished this. We didn't think it was necessary either.

They have obtained a great many benefits and we have benefited from the changes. I think that the relationship has been an excellent one. By the same token, they have carried back to the inmate population some of the things that I feel, such as cleanliness, keeping their areas in better order—I think that we all have benefited from the relationship with this committee and I have not always agreed with them.

Q. Will you tell the court why you chose to transfer the persons you did transfer and not transfer the members of the Liaison Committee? A. Well, in order to be elected to the Liaison Committee you must be respected generally by the inmate (598) population and this is something I think that these inmates have learned, the respect of their fellow men, and they were elected to the position, I respect that position. And they amongst themselves selected their own chairman, without any interference from us, and I felt that Barnes as their chairman should be permitted to act as one.

Q. When you directed Officer Connolly to make an investigation, did you specifically direct him to name the canvassers of the petition? A. No, I did not. I told him not to interfere with the petition, to just let it go. As long as no trouble was erupting, forget it, this was no problem.

Q. When you asked Officer O'Mara to undertake an investigation did you give him any specific direction as far as which information you needed? A. No, I did not.

Q. How many officers are normally assigned to the key room during the evening shift? A. One or possibly two. It depends on the amount of people that we have available on a given evening. This is also our package room and our key room, and during the early evening there may be an officer who is giving out packages. There is also an officer directly across the hall from the key room at the commissary. He (599) usually stands outside and maintains some control over those men who are purchasing.

Q. Would it be unusual if three officers were assigned to the key room on a given evening? A. Yes, that would be unusual.

Q. When you were confronted with a problem in the institution—when you are, do you personally undertake to investigate that problem? A. No, I don't. I generally delegate this responsibility to one of my subordinates.

Q. Who are the subordinates? A. I have two new ones. Generally it would have been the deputy superintendent. If it related to custody or anything similar, it would be the deputy superintendent, the assistant deputy superintendent, the captain or some of the lieutenants.

Q. Did there come occasions when you asked either Mr. O'Mara or Mr. Otis to make investigations for you? A. Yes, I did, on Monday, the 5th, I believe, and to Mr. Otis when he returned from his vacation on Wednesday.

Q. Was this a usual procedure on your part? A. This is the usual manner of operation.

Q. Can you estimate for the court the number of (600) instances where you asked either of these two subordinates to make investigations and report back to you? A. Almost

daily, some of minor importance, some of—of course, they wouldn't be of major importance daily but hardly a day goes by I don't ask them to investigate something.

Q. How long did you work with Mr. O'Mara at Wallkill? A. Off and on, I would say about 10 or 12 years.

Q. Would you express an opinion on his ability in regard to conducting investigations?

> Mr. Pachoda: I object at this point to having this witness express an opinion as to Mr. O'Mara's ability to conduct investigations.
>
> The Court: I will sustain the objection.

Q. What did you observe in regard to the competence of Mr. O'Mara's investigations he made for you? A. I think he is a very competent supervisor. He has been offered the superintendency at three or four of our correctional facilities in the last year and has turned them down because he likes Wallkill and likes the institution. He has been No. 1 on the superintendent's list for a long time and refuses to take the position. I think he is extremely competent.

(601) Q. As the result of any incidents that occurred at the movies at Wallkill, have any inmates requested to speak over the loudspeaker? A. Would you repeat that?

Q. You were asked on cross examination about incidents that occurred during the showing of films at Wallkill. A. Yes.

Q. My question is whether, as a result of any of those incidents, an inmate requested to address the general population over the loudspeaker? A. No.

Q. On June 2nd, when you first learned of the circulation of these petitions, was there any talk between you or your subordinates about transferring any inmates? A. No, sir.

Q. Was there any talk about transferring inmates on June 3rd? A. No, sir.

Q. Was there any talk about transferring inmates on June 4th?. A. No, sir.

Q. Have there been other occasions at Wallkill (602) where inmates who were involved with Martin Sostre were transferred from the institution whereas Martin Sostre was not transferred? A. Prior to my transfer there or appointment at Wallkill there were a number of occasions—

> Mr. Pachoda: Your Honor, I would object.
>
> The Court: Even though it is redirect examination, unless the question would relate in some way to Mr. Newkirk or Mr. Lucas I would sustain an objection.

By Mr. Hoffman:

Q. Mr. Butler, do you have any personal animosity toward these plaintiffs? A. No, I don't, none.

Q. Would you tell the court what your attitude is toward these plaintiffs? A. I believe that they were very good inmates at Wallkill, that they never created any problems, as far as I was concerned, and I respected them, and certainly never would have been involved in a recommendation for transfer had not this situation developed.

Q. During the week leading up to the transfer of the plaintiffs what was your primary concern at the institution? (603) A. I was concerned with the safety and security of all the people there, including those I transferred, the employees and the individuals. A riot is a terribly dangerous thing and I didn't want anything like that to occur.

Q. What was your primary concern in relation to the activities on behalf of an inmate labor union? A. Although I disagree with the labor union, if it is decided by the court that this is proper, I will live with it and get along with it. It is just my personal opinion, that's all.

Q. During the week preceding the transfer of the plaintiffs what was your primary concern with regard to the activities on behalf of the inmate labor union? A. I was only concerned with the safety and security of the institution. This was my prime concern.

> Mr. Hoffman: No further questions.

Recross examination by Mr. Pachoda:

Q. Mr. Hoffman asked you about the Inmate Liaison Committee. It is true that you had no information that Mr. Lucas or Mr. Newkirk in any way wanted to destroy or undermine the Inmate Liaison Committee, isn't that right? (604) A. That's true. I don't have any personal information that they wanted to do that.

Q. And you are aware, are you not, that at Green Haven Correctional Facility there is an Inmate Liaison Committee that is operating with the union? A. I don't know how they operate there. I am not acquainted with the Liaison Committee there.

Q. You were not told of any conversations or any incidents in which Mr. Newkirk or Mr. Lucas stated they were against the Inmate Liaison Committee in any way? A. Would you repeat that.

Q. At any time from June 2nd through June 8th did you receive any information referring specifically to Mr. Lucas or Mr. Newkirk that indicated that either of them was against the Inmate Liaison Committee? A. All I had was the report from my subordinates. They may have, I did not.

Q. Did your subordinates indicate to you that Mr. Lucas or Mr. Newkirk were in any way opposed to the Inmate Liaison Committee? A. Not specifically, no, they did not.

Q. You mentioned the key room and that in the evenings there are generally one or two officers assigned (605) there, is that right? A. There may be two. I said during the early evening, when the package room is opened, there may be two officers there. Generally there is one man in the key room who issues the keys.

Q. It is also true that in the evening there are a number of correction officials, such as Mr. Connolly and Mr. Alexander, that are not assigned to one spot and move around the institution? A. That is correct.

Q. And it is not unusual for them to be in the key room at one point in the evening? A. No, not unusual.

Q. You stated that you feel that Mr. Lucas and Mr. Newkirk were very good inmates while at Wallkill? A. I would say they were good inmates, yes.

Q. They were selected to come to Wallkill because of their good records, I take it? A. That's correct.

Q. And you knew that they did not want to be transferred from Wallkill? A. I would presume that.

Q. In spite of that, in spite of the lack of specific information, you at no point during the week of (606) June 2nd through June 8th felt it would be important for your own information or important for the attitudes of these men to speak to them about what had occurred? A. If I were to speak to them that would be some indication that I was considering transferring them or considering some other action. My concern was—and I felt that this was going to die, that it was going to die a natural death, there was not going to be a continuation of this controvery, and I felt it would resolve itself.

Q. You spoke to a number of inmates, including Mr. Coy Smith, about their activities with the inmate labor union, did you not? A. I spoke to him later. I merely asked him his opinion. I said, "I understand you have been interested and would you explain to me why?"

Q. And did you not feel you would do that, engage in that type of conduct with these two inmates prior to transfer? A. I felt they might feel I was attempting to discourage the organization of a labor union, which I was not attempting to do.

Q. You didn't feel you could explain that to them? A. I felt they would take—I felt they might feel (607) it was an attempt to discourage a labor organization on my part.

Q. You felt if you called some people involved in the union it might appear you were attempting to discourage it? A. Yes.

Q. Do you not feel when you transfer people involved in the union that that would be the most striking notice to inmates at Wallkill you were trying to discourage the union? A. I didn't transfer them for attempting to form a labor union; I transferred them because they were creating trouble long after the petition had been signed. Long after it had been circulated this continued to run, and this is why I felt that something had to be done before we had a very serious problem, and sometimes some of your finest inmates became the most assaultive and disruptive during a time of stress.

Q. You did not have any indication that these two plaintiffs were becoming assaultive or— A. I was assaulted by an inmate who liked me and was my friend and put me in the hospital for two months.

Q. You had no indication that these plaintiffs were being assaultive? (608) A. No.

Q. When you say continuing trouble, that had to do with their strong advocacy for the union? A. Yes, this is perhaps what prompted it.

Mr. Pachoda: No further questions.

Redirect Examination by Mr. Hoffman:

Q. Were you concerned only with their advocacy of the union? A. No. I was not concerned with their advocacy of the union, but what it was doing to the facility.

Harold N. Butler—Defendant—Redirect.

Mr. Hoffman: No further questions.

Mr. Pachoda: No further questions.

The Court: The court has one or two questions, if I may ask them.

By the Court:

Q. It was brought out during your examination that after he left Wallkill Mr. Rodriguez wrote a long letter back which came to your attention. A. Right.

Q. Did you receive any communications from either Mr. Newkirk or Mr. Lucas after they left Wallkill? A. No, sir.

The Court: The court has no further questions of Mr. Butler.

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Excerpts From Admissions of Petitioner Harold N. Butler, Read into the Record at Trial

[Trial Minutes, pp. 30-33].

(30) That inmates are very carefully screened before placement at Wallkill.

That only inmates who are believed by Superintendent Butler and his agents to be amenable to the Wallkill program are placed there.

That ordinarily once placed at Wallkill, an inmate serves the duration of his sentence there.

That transfers of inmates from Wallkill are fairly infrequent occurrences.

That there are rooms or cells at Wallkill which may be locked.

That plaintiffs were transferred because of their alleged role in organizing inmates to sign a petition to form an inmates union.

That plaintiffs were transferred from Wallkill because by allegedly circulating the union petitions the superintendent and his agents believed that they would cause trouble.

That dangerous inmates may be locked up in available cells or rooms at Wallkill in the event of a disturbance there.

That Wallkill is the state's only medium security facility.

(31) That at a medium security facility inmates are given a greater measure of unsupervised freedom than inmates at maximum security facilities.

That Wallkill has many special programs which other maximum security facilities in the state do not.

That more inmates apply for placement at Wallkill than can be accommodated there.

That inmates once placed at Wallkill generally do not want to be transferred.

Excerpts From Admissions of Petitioner Harold N. Butler, Read into the Record at Trial.

That the cells or rooms at Wallkill are usually not locked.

That comparatively Wallkill has a smaller percentage of black inmates than other correctional facilities in the New York State system.

That all transfers from Wallkill to other correctional facilities must be approved by Commissioner Oswald or his agents.

That as Superintendent of Wallkill, Superintendent Butler has responsibility, subject to the approval of Commissioner Oswald for setting Wallkill disciplinary policies.

That inmates at Wallkill are told by Superintendent Butler and his agents that violating institutional rules may lead to their transfer.

(32) That Sergeant Alexander and Lieutenant Connolly did not report having observed plaintiffs trying to disrupt a meeting of the inmate Liaison Committee.

That there were no fights among inmates observed by Superintendent Butler or his agents on June 3rd over the union petition.

That there were no fights among inmates observed by Superintendent Butler or his agents on June 4th over the union petition.

That there were no fights among inmates observed by Superintendent Butler or his agents on June 5th over the union petition.

That there were no fights among inmates observed by Superintendent Butler or his agents on June 6, 1972 over the union petition.

That there were no fights among inmates observed by Superintendent Butler or his agents on June 7, 1972 over the union petition.

That there were no fights among inmates observed by Superintendent Butler or his agents on June 8, 1972 over the union petition.

Excerpts From Admissions of Petitioner Harold N. Butler, Read into the Record at Trial.

That Superintendent Butler or his agents did not discuss with plaintiffs why they opposed the inmate union idea.

(33) That as a general rule inmates of Wallkill are permitted to discuss various ideas amongst themselves.

That there was no unwritten rule prior to June 2, 1972 prohibiting inmates from discussing formation of an inmates union of which plaintiffs had knowledge.

That plaintiffs were not seen or heard by Superintendent Butler or his agents advocating any violent action to obtain recognition of the union.

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Admissions of Former Commissioner of Correctional Services Russell G. Oswald, Read into the Record at Trial

[Trial Minutes, pp. 359-362].

(359) Mrs. Walker: Commissioner Russell G. Oswald, defendant in this case, has admitted the following statements are true:

That as Commissioner of Corrections Defendant Oswald had the power and duty to supervise the correctional facilities in the New York State System; that as Commissioner of Corrections Defendant Oswald with his agents formulate the general disciplinary policies to be followed in correctional facilities in the New York State System; that Commissioner Oswald has denied recognition to the Green Haven inmates union; that Commissioner Oswald opposes the formation of inmate unions in New York State Correctional facilities; that Commissioner Oswald and/or his agents were consulted by Superintendent Butler, and/or his agents as to what should be done with the Wallkill inmates who were believed to be signatories or circulators of the union petition on June 2, 1972; that Commissioner Oswald and/or his agents approved (360) Superintendent Butler's and/or the plan of Superintendent Butler's agents to transfer plaintiffs to other facilities; that Commissioner Oswald and/or his agents did not require the superintendents of the institutions to which plaintiffs were transferred to give plaintiffs any hearing as to the reasons for their transfer; that Commissioner Oswald and/or his agents did not require the superintendent of Wallkill to afford plaintiffs any type of hearing prior to the transfer; that the circulation of the petitions by inmates at correctional facilities is not prohibited; that there is no written rule given to inmates prohibiting circulation of petitions for redress of grievances; that the inmates of Green Haven were permitted to circulate union petitions without being punished; that there were no violent incidents at Green Haven arising out of the circulation of union petitions there; that Wallkill is the State's only medium security facility; that security measures are much less restrictive at Wallkill than at Clinton, Green Haven or Auburn; that inmates at Wallkill are much less highly supervised than inmates at Clinton, Green Haven or Auburn; that Wallkill offers a number of special training programs which are not available at Clinton, Green Haven or Auburn; that Wallkill is much smaller than Clinton, Green Haven or Auburn; that transfers from Wallkill to other correctional facilities are (361) relatively infrequent; that before an inmate in New York State correctional facility may be deprived of good time, he is entitled to a hearing under the regulations promulgated by the Department of Corrections; that before an inmate in a New York State correctional facility may be kept in segregation he is entitled to a hearing under the regulations promulgated by the Department of Corrections; that the fact that plaintiffs had been transferred from Wallkill to other correctional facilities indicated in the records presented by prison officials to the Parole Board; that the superintendent of Wallkill did not tell Commissioner Oswald and/or his agents that plaintiffs' lives were endangered at Wallkill; that Superintendent Butler never told Commissioner Oswald and/or his agents that any special security measures were being made to protect plaintiffs as a result of threats made against them prior to their transfer; that Commissioner Oswald and/or his agents had never received any prior reports of misconduct from Superintendent Butler and/or his agents regarding plaintiffs while at Wallkill; that Commissioner Oswald and/or his agents did not direct the superintendent of Auburn correctional facility to give Plaintiffs Oliver and Rodriguez

Admissions of Former Commissioner of Correctional Services Russell G. Oswald, Read into the Record at Trial.

hearings before holding them in segregation at Auburn for over two weeks; that the percentage of black inmates at Wallkill is less than that at other correctional (362) facilities in the New York State System; that many more inmates seek placement at Wallkill than Wallkill has places available.

* * * * * *

Excerpt From Testimony of Witness Coy Smith at Trial

[Trial Minutes, pp. 192-94].

(192) Q. You said that after the incident at the key room you went to Martin Sostre's room and spoke to him at a (193) second time? A. No, I didn't speak. I just went by. He was talking and I didn't stop.

Q. Whom was he talking to? A. I remember one of the guys. There was two or three guys in his room at the time and the only one I remember, I think, was Rexford Charles, because that is who I was looking for and I spoke to him and he said "I'll talk to you later" and I kept walking.

Q. Subsequent to June 2nd, did you see any other inmates talking to Martin Sostre about the inmate activity? A. No. From the time I signed the constitution I had no conversation with him. I don't think I have had any with him since.

Q. Did you see anyone else or overhear Mr. Sostre discussing the union activity with anyone else after June 2nd? A. No.

Q. You testified before that some of the inmates were concerned about having signed the petition. A. Yes.

Q. What was this concern that they had? A. Well, the ones I remember specifically was a guy named Dennis, I forgot his last name, on the C. Gallery, who (194) was supposed to go home in a very short period of time, and he was saying he was going to go over and try to get his name off it because he didn't want to get boated out to another institution and a couple of the other guys was wondering about reprisals, because there was still an argument whether it was a petition or an application.

Q. Amongst those inmates who you observed were concerned about having signed the petition, did they express any anger or resentment toward the people who had given them the petition to sign? A. No. In a couple of cases some were confused as to really what was going on. I think some might have signed not even knowing what they signed and some did know what they signed.

Q. Did you observe any inmates during the period after June 2nd who were angry or resentful about having signed this petition? A. I observed some who said they regretted it because they were afraid there would be some reprisals.

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Excerpt From Testimony of Witness Eugene Eisner at Trial

[Trial Minutes, pp. 339-344].

(339) Q. I show you Plaintiffs' Exhibit 20. Have you seen that before? A. Yes.

Q. Can you describe what that is? A. This is the form retainer which I had suggested that the Prisoners' Rights Project obtain from the inmates at Wallkill in which the prisoners' labor union at Wallkill retains the Prisoners' Rights Project as its counsel in regard to union matters, and contains the signatures, as I recall, of persons who had in fact signed the constitution formally embodying the union at Wallkill.

Mr. Pachoda: I would like to introduce this into evidence at this time.

(Pause.)

Mr. Hoffman: No objection.

(Plaintiffs' Exhibit 20 for identification was received in evidence.)

The Court: I have difficulty, as I look at the retainer, reading two of the signatures. Perhaps for the record you could assist me. They are the fifth and the seventh names on the retainer.

Mr. Pachoda: I believe I do know who they are.

The Court: Would you state it for the record?

Mr. Pachoda: The fifth name, Eladio Arzuaga, Jr., (340) and the seventh is Eduardo Rosado. I will read the rest of the names:

Mr. Darron T. P. Martin; Allen S. Weinfeld, Charles Kenny, Martin Sostre, Carl Oliver, and Michael Williams.

The Court: And the date of the retainer is June 1?

Mr. Pachoda: Yes, your Honor, June 1, 1972.

Q. I show you Plaintiffs' Exhibit 4, already admitted into evidence, and ask you if you recognize that? A. Yes. This is the authorization form which I dictated to be used for the purpose of obtaining the requisite number of signatures of inmates to authorize the prisoners' labor union to act for it in all matters pertaining to collective bargaining, wages, hours and working conditions.

Q. You were the author of that language? A. Yes. This is the same language as the Green Haven form and only the name of the facility has been changed.

Q. Where does that language derive from? A. This language is derived from authorization cards which I have also authored for some of the other unions that I am counsel to or have been counsel to. This is the language which is presently accepted by the National Labor Relations Board, the State Labor Relations Board, the Public (341) Employment Relations Board, as the language which is proper for an authorization for a union to act as a collective bargaining agent.

Mr. Pachoda: Please mark this.

(Plaintiffs' Exhibit 21 was marked for identification.)

Q. I show you Exhibit 21 for identification and ask you if you have seen this before? A. Yes. I received a copy of this letter, which was sent by you, on June 9, 1972, to Commissioner Oswald and Superintendent Butler requesting recognition of the labor union at Wallkill.

The language contained in here is virtually identical to the language which we had used in the Green Haven matter.

Mr. Pachoda: I would like to offer this into evidence.

(Pause.)

Mr. Hoffman: No objection.

(Plaintiffs' Exhibit 21 for identification was received in evidence.)

Q. What steps were taken by the persons involving organizing the Wallkill union prior to the sending of this letter? (342) A. Well, I informed you that before a letter of recognition could be sent you would need a minimum of 50 per cent of the persons incarcerated. You cannot have recognition unless you represent a majority, and at least 50 per cent, 51 per cent of the inmates would have to have signed authorizations, as contrasted to the 30 per cent necessary for the filing of a petition, and I told you when you obtained the 50 per cent of the authorizations, at that point you could make a demand for recognition, using the same language we had used in Green Haven.

Mr. Pachoda: Please mark this for identification.

(Plaintiffs' Exhibit 22 was marked for identification.)

Q. I show you Exhibit 22 for identification and ask if you have seen that? A. Yes. This is Commissioner Oswald's response to your letter demanding recognition, a copy of which was previously received.

Mr. Pachoda: I would like to offer this into evidence.

(Pause.)

Mr. Hoffman: No objection.

(Plaintiffs' Exhibit 22 for identification was received in evidence.)

(343) Q. What is substance was Mr. Oswald's response to the demand for recognition?

The Court: I wonder, this has occurred before, and the letter is in evidence and I feel it speaks for itself better than any of us could state in substance. Also, the letter is rather brief, and for that reason I would sustain an objection to a question asking the witness to state the substance of the document.

Mr. Pachoda: I would like to read one sentence of the letter, your Honor.

The Court: You may.

Mr. Pachoda: "Please be advised that inmates of correctional facilities serving penal sentence are not employees of the penal institution in which they are incarcerated or of the State of New York. Accordingly, we are unable to bargain with them."

Q. Is that issue, as to whether inmates are employees of the State of New York, presently being litigated? A. That is the issue that is presently sub judice before the Public Employment Relations Board. The Wallkill petition is awaiting the decision in the Green Haven matter.

Q. In effect, the decision as to whether the hearing examiner will recognize or certify the Wallkill institution is also in front of him? (344) A. Yes. Mr. Klein said to me, "In the event we decide affirmatively that for the purpose, at least set forth in the statute, that prisoners are employees within the meaning of the Taylor law"—he said at that

time he would join the Wallkill matter and Bedford Hills matter with Green Haven, so that we could go ahead with all of them at the same time.

Mr. Pachoda: Please mark this.

(Plaintiffs' Exhibit 23 was marked for identification.)

Q. I show you Exhibit 23 for identification and ask if you have seen this. A. Yes. This is the petition that was prepared by you, under my direction, for the purpose of filing for certification of the Prisoners' Labor Union at Wallkill.

Mr. Pachoda: I would like to offer this into evidence.

(Pause.)

Mr. Hoffman: No objection.

(Plaintiffs' Exhibit 23 for identification was received in evidence.)

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Excerpt From Deposition of Lt. Arthur Connolly, Admitted as Part of Exhibit No. 1 at Trial

[Exhibit 1, pp. 12-48, 59-73].

(12) Q. Okay. And during this period right before dinner, they talk to each other and exchange words with each other and games of chess and so on, with each other? A. Yes, there's no—in Wallkill, I think you're possibly thinking about the other institutions, in Wallkill they're free to roam any area and they are not restricted to one area. They can go in the gym. The court is open outside this window. They can go to the music room, go to the library, at that particular time there's a commissary open where they go according to their gallery. Many activities going on. I mean, it's wide open. (13) They have free access to parts of the institution.

Q. From your experience, this is very different than other institutions? A. Definitely.

Q. Now, dinner takes place about 5 to a little before 6. A. That's right.

Q. Is there another count then? A. Usually there's a 6 o'clock count which commences about 6.

Q. And also then inmates return generally to the areas where they live? A. Yes. Outside of your kitchen and your dairy barn crew. Possibly they may go out early. There's possibly 20 or 25 inmates on the outside—off their housing location, housing unit location.

Q. All right. Then, after the 6 p.m. count, what takes place, generally? A. It usually takes between 20 minutes and one-half hour to verify the count through the process of adding and subtracting. Usually by 6:30 the galleries are then again (14) cleared and the inmates are allowed to participate in the particular program they want to participate in.

Q. At this point, it's again free time for the inmates? A. That's right. They go wherever they want within a free range.

Excerpt From Deposition of Lt. Arthur Connolly, Admitted as Part of Exhibit No. 1 at Trial.

Q. What type of things might people be doing at this time, just as an example? A. Well, your main activity would be your gymnasium. We have a recreation supervisor that works approximately from 12 to eight at night. We have two now. The gym is open until 8 o'clock, supervising intra-mural—basketball is one of the main activities here. The music room is open to 8 o'clock. The library is open until 8 o'clock and the televisions are on. There's many activities. I can't give you the total gamut that goes on.

Q. At this point, inmates are free to decide or choose— A. No restrictions here on who they can associate with. They are free to roam a (15) range, the total area of the institution outside of your locked areas, which would be your shops are closed and—

Q. Right. And if a group of inmates wanted to sit and talk with each other, they could just sit down and talk? A. Right.

Q. Or write something up or whatever? A. That's right. No restrictions.

Q. And then, is there another count? A. 8 p.m.

Q. There's an 8 p.m. count? A. Right.

Q. Inmates generally have to return to— A. Same process occurs, only there's probably less men on that out count.

Q. Right. A. That takes probably 20 minutes.

Q. Okay. And then after that? A. If the count is okayed, they proceed in the same general area, they can go anywhere. The gym is still open. Usually an officer supervises the gym at that particular point. They may play basketball or volley (16) ball, whatever type of recreation might be scheduled for that particular evening.

Q. Right. A. Now, I'm talking about winter schedule. There's a summer schedule too. Generally, this is what happens.

Excerpt From Deposition of Lt. Arthur Connolly, Admitted as Part of Exhibit No. 1 at Trial.

Q. It wouldn't be very different in terms of the mobility and freedom? A. No, the basic freedom is there. The basic freedom is there.

Q. Right. And inmates—let me ask you this, the inmates, what are their housing facilities like? A. We as Correction Officers still use the old terminology "cell." But actually they're rooms.

Q. They're rooms. A. But we still use the terminology "cell."

Q. Right. And there would be how many people in a room? A. New York State in your correctional facilities, I believe the law states one man to a room.

Q. Can you briefly just give me an indication of (17) the difference between the rooms here at Wallkill and the ones in the other institutions, the maximum security institutions. A. In my opinion, or what it looks like?

Q. Looks. A. Bars. There's no bars. There's a door on it.

Q. There's a door you can close? A. Right. And the toilet facilities are on the end of the gallery. You can look right out that door here and get a view, your own visible example of what I mean.

Q. And what might an inmate be allowed to have in his room? There's a bed, I take it. A. All the necessary facilities of a housing unit or housing room. There are certain restrictions, but not that many. There's a locker, clothing rack, lamp, small desk, I think that's what you mean.

Q. Yes. A. Basically, each room is the same in content, regarding the necessities of living in a small area.

Q. But there's room to write— (18) A. Yes.

Q. —and the inmates can type in their rooms? A. Yes, indeed. They are allowed to have typewriters. We don't

Excerpt From Deposition of Lt. Arthur Connolly, Admitted as Part of Exhibit No. 1 at Trial.

discourage any typing. Possibly, at night we might, but in parts of the evening, no.

Q. Is that a solid door? It's not a glass door? A. There is a small opening about maybe one by two inches, where the officer during the night shift has to make his count, during your midnight to eight, actually basically between midnight and 7 a.m. in the morning, where he more or less verifies that the man is there, whether he's all right, whether healthwise he's still functioning. It is possible that a man could get sick during the night and the officer is required to make frequent checks of the area.

Q. During these free periods during the evening, can more than one inmate go to a room and sit and talk? A. They usually allow four—five inmates in a room at one particular point. It's rather crowded, but it is five.

(19) Q. But five could go and sit and talk? A. Yes. Any more than five is not feasible.

Q. Not too much room? A. That's right.

Q. There's the eight o'clock count and then is there— A. A ten o'clock count.

Q. Ten o'clock count. A. I am sorry, we've done away with the ten o'clock count within the last two months. We have an 8 and 11 o'clock count.

Q. But would this be the time they return to— A. This is the time, this particular time at 11 p.m. is when they return to the galleries, the televisions are turned off at 11 p.m. The count is made. They're usually in bed or in their room by 11:30 p.m. at night, at which time another count and then the midnight, the relieving Lieutenant or Sergeant on the midnight shift comes in and verifies that that count is okay and I am permitted to leave.

Q. At some point do all the lights have to be out? (20) A. The lights usually go out at 10 minutes after 11 at night.

Q. Then all activities go on until 11 o'clock at night? A. Usually, there's a cut-off point, 11 p.m.

Q. Go to the gym and watch t.v. and so forth? A. Yes. Outside of the time the count is on, they are locked, otherwise, they are permitted free access to three-quarters or 85 per cent of the institution.

Q. Okay. Now, to get a little more specifically to June 2nd. I think that at some point after you came on duty, you became aware of inmates passing a petition or an application; is that right? A. Right.

Q. About what time was this? A. Approximately, oh, around 4:30 or 4:15; somewhere around that time.

Q. Do you recall where you were then? A. I was right downstairs where we went in the building.

Q. Did you see the inmates holding the petition? A. My officer saw them.

(21) Q. I see. You don't recall who actually reported to you? A. No, I can't recall who, but as this developed, many officers reported in from the galleries that there were people circulating petitions, and I advised them to keep a close watch out to prevent any—find out what was going on and to prevent any difficulty or anything happening.

Q. This was a fairly unusual occurrence, I take it, the passing of petitions? A. Well, not—you know, Wallkill is not the type of institution where one gets upset about these things. One really has to keep an eye on what is going on, in other words, to prevent any problems from developing.

Q. So, basically, your advice to the officers was just curiosity, find out what was happening? A. Yes. Find out in the process and prevent any problems as a result. You know, what's happening and keep me informed. Let them pass the petition. There's no objection to that.

Q. Did you recall—well, Mr. Alexander, I think, (22) was on duty that night. A. He was with me, yes. He was my second in command.

Q. Right. Was he with you at the time physically when you heard this or was he one of the ones who reported to you— A. No, he was probably in the kitchen. I can't remember where he was.

Q. Now, would there be the same officers, pretty much, on that four-to-12 shift? A. Yes. They keep the same help outside of your regular days off. It's a steady shift for these people, with the union regulations and I use that as a joke. They bid in on these jobs now. It's a bidding process.

Q. Is that a desirable shift? A. For me?

Q. Yes. A. Well, for my benefit, it was. I graduated from college working the four to 12. So it benefited me. I have to be honest, that some people have outside interests, shall we say, and prefer to work the four-to-twelve. Each to his own interest.

(23) Q. Okay. But you don't remember which officers at approximately 4:30 came and reported this to you? A. I would have to get the chart. If I had the chart for that day I could definitely tell you who it was.

Q. Do you have the chart with you? A. No, I don't have it.

Q. Is it here in the institution? A. It's here in the institution. Matter of fact, I can tell you the gallery. The CD-1 Gallery was the one who reported it to me.

Q. CD-1? A. Yes.

Q. Yes? A. He said that they were passing the petition and I said to him, find out what it's all about, et cetera, et cetera and just keep me informed and—

Q. Okay. And then, I assume shortly after, people went to dinner? A. Right after that, they did, right, they went about ten minutes to five as I mentioned (24) before and I started to get various reports on the activity that was going on, the people that were circulating the petition. It gradually progressed until after dinner—naturally, in the mess hall, we didn't have any contact with the petition. We didn't even discuss it.

Q. There wasn't any contact? A. No.

Q. Dinner as usual? A. Normal dinner routine.

Q. Were you in the mess hall yourself? A. Yes, indeed, I always try to be in the mess hall.

Q. Can you be a little more specific about the increasing reports you got? Who they were from? Other officers? A. Most of the gallery officers would have to see what was going on. It was an activity that normally didn't exist prior to—say, prior to yesterday or the day before or whatever. A man's going around with a piece of paper in his hand, a newspaper clipping, as I was told. Officers are trained to observe.

(25) Q. Again, do you know any specific names of people who reported to you, any of the officers? A. There again I'd have to go through the chart. I didn't know you were going to go into these details. But I can get the chart and tell you.

Q. Maybe we should do that.

After dinner, did you return back to the control room? A. Yes, we took the count, came upstairs and went around the telephones, the administration buildings, where you came in.

Q. The six o'clock count, as you recall, went as usual? A. Right. It really went smoothly. There was no problems. There was no problems at all at that particular time.

Q. Then you returned to the control room? A. Yes. I made a—I think I might have walked around. I can't remember, you know, my exact movements. I probably made a round, tour of the institution. I was in the general area.

I try to stay close to the phone which (26) is most important.

Q. The phone is in the control room? A. Well there's phones throughout the whole area. There's a switchboard. Right down below this floor here is a telephone switchboard. In that area, pretty close to the phone.

Q. For the record, we're on the second floor. A. In the hospital, second floor.

Q. By the floor below, you mean the main floor? A. This is all the administration building. The first floor is where you entered the building and there are the telephones.

Q. And the basement is one floor below? A. One floor below. Directly below your telephone switchboard is your control area, whatever you want to call it.

Q. I see.

We have been given the Duty Chart which we'll mark as Plaintiff's Exhibit 1 for identification.

Q. Okay, then, returning to the night of June 2nd, after the 6:30 count, you recall as specifically as possible, what other reports you received and what the nature of (27) those were. A. No, but around 6:30, after the 6:30 count, I recall passing an inmate that belonged to the liaison and I said to him, casually, in passing, I said, Are you aware of a petition being circulated through the population regarding—I found out eventually between 4 and 5:30, that this was a union petition, because I had been acquainted with the petition that was circulated in Greenhaven through the newspapers. So I casually mentioned it to him more in a joking way and he seemed flabbergasted that such a petition existed and exhibited behavior of disbelief. And I laughed and went on.

Q. Do you recall who this was? A. I think his name was—do I have to give his name? Okay.

Q. You talked about at some point you passed an inmate and you asked him if he was aware of the petition about the union being passed? A. Yes.

Q. And he was surprised at that? (28) A. He was flabbergasted. He expressed disbelief that it was going on and I more or less said, It's true. I'm not joking. And I proceeded on.

Q. And you are aware of this inmate's name? A. Yes, I am.

Q. Would you tell us that person's name? A. No, I won't, unless I'm ordered to do so by a Judge.

> Mr. Pochoda: The plaintiffs object to this and feel that this will make the rest of the deposition somewhat meaningless and will continue to—attorneys for the Defendants refuse to let the witness answer the question and we have advised them that we will continue the deposition in Foley Square; that we will go on today, but we will have to continue the deposition for these parts in Foley Square in front of a Judge.

Q. You mentioned that, earlier you found out that the petition was involved with a union.

(29) Do you recall about when you found that out? A. I probably found that out about, oh, just before I went to the mess hall. It was mentioned to me that the officer had observed a newspaper clipping with the circulation of the petition and he, being observant, it mentioned Badillo and through association, and the petition, I assumed that it was the labor union attempting to organize.

Q. You were familiar with this because it had happened at Greenhaven? A. I live in Dutchess County and only live about 20 miles from Greenhaven and I am aware of the union activities and I read it in the Times and the local papers regarding the union.

Q. Had you seen the actual paper that was being passed around at this point? A. No, I didn't.

Q. What time of the evening, did you actually see the paper that was passed around? A. I never did see the paper.

Q. You never actually yourself saw it? A. No, I didn't.

(30) Q. All right, when did you speak to this member of the Liaison Committee? About 7 or so? A. I'd say around—between 6:30 and 7 o'clock; somewhere in that area. No later.

Q. Had there been any discussion to your knowledge, about the union, at Wallkill, prior to this? A. No, I never heard it mentioned.

Q. And you never heard it mentioned by the Administration, either, I take it? A. No, it was never discussed. I think everybody was—I thought everybody was happy. Apparently, they weren't. As happy as you can be in an institution.

Q. Now, what happened after this? Where did you go after this? A. I decided to, being that this thing was brought up, it started to develop into more than my responsibility warranted, and naturally, it's the duty of the Supervisor to keep the top Administration informed and I contacted Mr. Butler, the Superintendent. I apprised him of the situation and I told him that I had mentioned it to one of the Liaison Committee Members and he expressed (31) surprise. I filled him in on most of the details.

Q. About what time would this be? A. Probably around 7 o'clock; somewhere around there. I can't remember.

Q. Somewhere around 7? A. Yes, right.

Q. You called this man on the phone? A. Yes, I did.

Q. Where would be Mr. Butler be found? A. At home.

At his residence. He lives up right at the end of the street here.

Q. Street here? A. I said street. It's row. As you came in the institution, that house on your right as you came down, the first—after you came up there, that's his residence. The State supplies his residence by State Law.

Q. And you then indicated that you heard all these reports about— A. And things were developing and I told him, and he said, just keep on top of it. I mentioned to him that the—I'm repeating myself—that the Liaison Committee Member (32) expressed surprise and we went on from there. He hung up and I completed the conversation.

Q. Just to go back for a second. When the Liaison Committee Member left, I take it, did he indicate he was going to try to find out about what this was, what this petition was about? A. I don't remember now. He did express surprise and—

Q. Returning briefly to the time that you met the member of the Liaison Committee, did he indicate to you that he was going to attempt to find out what the nature of the petition was? A. Not verbally, but when you mention something in this vein and no one knows anything about it, you know, an institution is an abnormal environment and rumors are always a rampant source of information. Right away, he must have went back and checked on it, on what I said.

Q. Were you surprised that he didn't know about it, this particular inmate? A. Yes, I was.

Q. Why? (33) A. Because the purpose of the Liaison Committee I would assume, is to—they're elected officials, shall we say of an institutional community in New York State. They're representative of the inmates. I would assume that they would have known this petition was being circulated, because being duly-elected representatives of a group, they would normally indicate by logical deduction that they were aware of it. That's what I assume, I was surprised.

Q. How many members are on the inmate's Liaison Committee? A. Six.

Q. Do you know the names of the six people? If you could just tell me on June 2nd, who were the elected members of the Liaison Committee? A. Barnes.

Q. Warren Barnes? A. Warren Barnes was one. Henry Best.

Q. Henry Best. A. I think Rodney Culpepper—I don't know—don't quote me on the first names. Crabbe.

(34) Q. Crabbe. A. How many is that? Four?

Q. Four. A. Gagnon. And believe it or not, I can't remember the last name.

Q. Well, we can get back to it, if you do. Now, after you spoke to the inmate, you spoke to Mr. Butler, and then what did you do? A. I am trying to recall in what area I was. I was either at the key room which is adjacent to the control room. Or I was upstairs and I was informed by either the officer downstairs that some of the inmates wanted to see me, the Inmate Liaison Committee.

Q. Do you recall this officer that mentioned this to you? A. I believe it would be Mr. Harvey. Now, this is not a—I can't swear to something so accurately. But it was brought to my attention that the Members of the Liaison Committee wanted to see me. I went down, I believe, or had them come upstairs.

Q. Where would they be, the Members of the Liaison Committee? (35) A. Yes, they were at the key room, which is down next to the control room.

Q. Right. A. This is more or less, one of the focal areas of the institution where inmates come to request information or they can pick their packages up or any type—it is more or less, an information center. I brought them upstairs. Let's see. Two of them came. I just can't recall who they were. It was either Best or Barnes and they got the other members and we went upstairs to the Warden's Office which is—Superintendent's Office which is downstairs.

Q. Let me just stop here for a second. Inmates have access to the key room? A. Oh, yes, the key room is a—there's a grill, small opening, probably two-by-three where keys are dispensed to employees through that area. They have free access to come to the—for instance, if a person wants to go to the hospital in an emergency he would have to go to the key room in order to get upstairs. So, I'm trying to describe (36) it. It's more or less of a focal area where an inmate, if he had any problems, different specific problems, he would come to that office, the key room.

Q. They went down there and then the officer came up and talked to you? A. No, he called me on the phone.

Q. Called you on the phone? A. Right. And—

Q. You told him to bring— A. I brought them downstairs.

Q. You went down to the key room yourself? A. No, I had them sent up. It's right up the stairway. There's only a grill gate and they just—the officer in the key room controls it and he opened the grill gate.

Q. Right. A. Prior to that time, they must have convened as a group. And they must have convened and talked the situation over. I didn't ask what went on but they came to me and they requested that I—wanted to talk on the loudspeaker; that was basically the request. And I immediately contacted the (37) Superintendent and I brought them upstairs; it was either upstairs or downstairs. I can't remember which. But the main point that they wanted, was they wanted to make an announcement over the loudspeaker system and I said I would have to check with Mr. Butler. I brought them to the Warden's office, all six of them and I called the Superintendent in their presence and I conveyed their request and as a matter of fact, Barnes requested to talk to the Superintendent on the phone regarding the request of speaking on the communications device and Mr. Butler gave the approval.

Q. Did they state specifically what they wanted to say or did you tell Mr. Butler what they wanted to say? A. Well, Barnes indicated—Barnes, who was more or less the spokesman for the group indicated that he wanted to convey a message. When he spoke to Mr. Butler, I overheard—naturally, I had to overhear it, everyone did.

Q. Right. (38) A. And he wanted to state on the loudspeaker that the Liaison Committee was not involved in the circulation of this Petition.

Q. Were they upset, the Liaison Committee upset at this point? A. Well, they were concerned. I wouldn't say upset to the point where they were raving mad, you know, or extremely agitated. But they seemed concerned. There again, this is an opinion. It appeared to me that they were upset as a duly-elected organized body that they were not consulted in this, the formulation of this petition. There again, I'm assuming. This is just an opinion. That's what it appeared to me.

Q. Right. And they didn't know about it prior to this night? A. Not the way I make it.

Q. I take it, it is unusual for inmates to talk over the P.A. system? A. Yes, I would say that. It's not a usual occurrence.

Q. But why did they feel it necessary to tell people that they were not involved in this? (39) A. There again, do you want an opinion, what I believe or—I can't base this on—I can only base it on what I observe. I would assume they were rather upset about the fact that they weren't consulted with the petition was circulated. Second of all, I would assume that they were upset that their name was being used as a source of circulating this petition. These were again, what I observed.

Q. I see. You stated earlier, that you had, at some point during the evening, begun to find out who was involved, or who was involved to some extent in passing this petition? A. Well, all of these officers on this particular duty chart are all assigned to inmate locations, housing locations.

Q. Right. A. So, therefore, as time went on, you would be getting reports of them passing these petitions around.

Q. Do you recall which inmates were mentioned as passing these petitions around? A. Well, Brother Sosfry, yes, he was one of the ones. I know that. That was documented.

(40) Q. Documented how? A. The officer.

Q. What did the officer say to you. A. He saw him circulating it.

Q. Did he say how he saw him circulating it? A. He was walking around, just passing it among the inmates; that's all.

Q. Do you recall who the officer was who mentioned that? A. No, I don't. I can't recall because it was—there were numerous reports coming in. I didn't categorize—naturally, when something like this happens, we didn't know there was going to be—what's happening now as a result of this. So, therefore—

Q. Well, I understand. If you do have it? A. I don't know. But Sosfry was circulating throughout the whole institution as were the rest of the people circulating as were the rest of the people circulating these petitions.

Q. Do you recall any other names? A. Lucas, Oliver, Newkirk, Kenny.

Q. All of these were reports from officers to you? (41) A. That's right.

Q. These men were observed passing the petition? A. This place is wide open. It's not a question of—you know, you would have to observe it. An officer would be derelict in his duty if he didn't see people walking around with a petition with a newspaper clipping and a person of Mr. Sosfry's stature would indicate that there was something going on.

Q. These reports, were they basically in the nature of, These were the people I saw involved? Did they mention anything else? Anything else that was going on. Just I saw Mr. Oliver and Mr. Lucas passing the petition? A. Yes, these names were associated with it and that would be it. There was no arguments and there was no fights. Just passing the petition around.

Q. Were there any other names that you recall? A. No. I—not right now—I could defer that.

Q. Was there any record, a written record kept of (42) this, when you received it? A. I have a record.

Q. You do have a record? A. Yes, I do.

Q. Do you have that on the premises? A. I do.

Q. You mentioned that there were some other reports besides officers, about the passing of the paper; is that right? A. Right. During the time possibly between 6:30 and 7, 7:15, about prior to the Liaison Committee approaching me, an inmate came to me and wanted to talk to me. The inmate came to the key room as mentioned previously—excuse me, he spoke to the officer in the key room, Mr. Harvey, Mr. Harvey contacted me and I asked him to come upstairs. In these cases, it's always best to try and take the inmate away from the population. There is less chance of causing problems. The man came up to me and he expressed concern. He said Wallkill was a good institution. He said that this—these actions that were going on, he thought, were detrimental to the philosophy (43) of Wallkill and principles involved and he mentioned—told the content of what the petitions were. He didn't mention anything about the Liaison Committee not being involved. He did mention, he felt, and this was only his opinion, that this would have been detrimental to the security of the institution.

Q. Did he mention some of the people involved in passing the petition? A. No. I can't recall. He didn't mention any names. He tried to mention the fact that he didn't think this action—he didn't give me any names. I didn't ask him and I didn't want any names. This man has never been an informer to me. I have never had that intimate contact with the man. He came and volunteered this information.

Q. You know his name? A. Yes, I do.

Q. You don't want to give it to us now? A. I will not give it unless I am ordered to do so.

Q. You stated that this information as well as (44) other information concerning reports from officers is recorded in a written document; is that right? A. Yes, my report is documented.

Q. This report that you made out yourself? A. I speak for myself. My report is documented

Q. When did you write this? A. I wrote that—I started the document probably about 11:45 that night and I didn't leave the institution probably until a quarter to one the next day.

Q. And in that you covered the— A. I covered the total events of the evening, as I saw it, to the best of my ability. I covered the events.

Q. Is it usual for you to write a report after your shift at 12 o'clock? A. I have done it before. When you work

for the State, you find out that sometimes in extenuating circumstances, you have to stay beyond your tour of duty. But in this particular instance, the situation warranted it, where I didn't have time to write the report before. I couldn't sit down, you know, it takes (45) at least 35 to 40 minutes to write it. I don't type. I write in longhand, so therefore, it was a report of a confidential nature. I don't have a typist and therefore, I wrote it myself and therefore, it takes time. With the tension that was going on in the institution that particular time it behooved me to wait until I had a quiet time to get my thoughts together and write the report.

Q. This report went to who? A. Mr. Butler. Through the chain of command; through a man by the name of Mr. O'Mara who is Assistant Deputy Suprintendent. It was channeled to him and then it went to Mr. Butler, the Superintendent.

Q. Now, getting back to the night of June 2nd earlier, none of the—well, the Inmate Liaison Committee, about what time was it when they requested to go on the air; do you recall? A. I can't give you the exact time, but it probably was around a quarter to eight. Around that time. It was in that area. You know, I can't remember the events as it (46) existed, but it was around 8 o'clock. Either prior to it or after it. I believe it was prior to it.

Q. Then, did the 8 o'clock count take place? A. I would assume if it took place—yes, somewhere around there. It was in that area, you know, around that time. Might have been after. I can't remember exactly. I am sorry about that.

Q. Was there some discussion between yourself and the Liaison Committee about the advisability of going on the air or not going on the air at that point? A. No, I didn't advise them to do anything. They had requested the Superintendent to perform this action, Mr. Barnes, or whatever you want to call him, he seemed to be disposed to it and indicated his desire to go on. And I don't think if I had been able to deter him, the situation developed that he wanted to speak on the loudspeaker. No one forced him. No one advised him. I didn't realize what the ramifications would be after he spoke. I never thought about it. But there (47) was tension and there was some tension as the petition was going around. You know, it's not a usual situation to have a petition circulating, so the officers were wondering, the inmates were wondering. There's to a degree, tension.

Q. But as you said before, you yourself didn't observe the petition being passed around, personally? A. No, my officers did and I—my officers are usually competent individuals. In Wallkill, one has to train himself to be observant. Here, we don't have that much control. Our policy here is not one of control. The burden to observe the rules is on the inmate.

Q. Did any of the officers in their reports to you about passing the petition suggest that it would be a good idea for the Liaison Committee to make a— A. No, they would never have known that the Liasion Committee was involved or sponsored this. I believe, I don't know, but they would never have suggested this.

Q. Did any of their reports suggest that the tension was very high and therefore, the Liaison (48) Committee might go on the air to alleviate it? A. No, no, they didn't mention anything like that. My officers didn't say that. They just kept me informed and that was it.

Q. They didn't mention that the tension was very high? A. Not at that particular time. There was a scurrying of activity going on, you know. It was an unusual situation and whenever there is anything like that, there is tension, I would assume.

Q. You mentioned the phone call to Mr. Butler and Mr. Butler agreed to let the Liaison Committee go on the P.A. system? A. After he spoke to Barnes on the phone. And he said is this your wish, etc., I can't remember the exact conversation, but Barnes, with the approval of the rest of the Committee, Barnes wanted to go on the air. They were permitted to do so.

Q. And when did that take place? A. There, again I can't pinpoint it, but say, either before 8 p.m. or after the count . . .

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(59) Q. And at some point, did this group of inmates disperse? A. Yes. I would say, after—from the time it commenced to the time the discussion ended, probably about an hour. I stayed in that area, then, because I didn't want to leave. The Sergeant was there and the officer was there. See, the other two officers that were on this chart, usually open this court. This court out here is open until night and I mentioned, the gymnasium is open from 8 to 10, where an officer covers the recreational area.

Q. Right. What time would this have broken up then? A. I would say—

Q. Approximately. A. —9:30. The discussions around the key room, about 9:30.

Q. And did they return to their areas? A. Wherever they came from. Things quieted down.

Q. Right. A. There was a few inmates—I know one particular inmate came to me and there again, (60) don't know his name and he said to me that he wanted to find out how he could remove his name from the petition. And I said, I haven't the slightest idea. I don't know. If you put your name on the petition, that's your prerogative. I am not going to go find out about the petition.

Q. After the Liaison Committee made the announcement? A. He was rather upset about it. I don't know why. I told him, Don't worry about it.

Q. Then, after they broke up where did you—after the crowd broke up, were did you go? A. Oh, I think I made a round, the usual procedure. I believe I did. I can't know exactly what happened, but I made a tour. I made a tour of the institution to see what was going on.

Q. Okay. And then you returned to the control area? A. I returned to the area—yes, control area of the Administration Building.

Q. Right. What happened then? A. That was it. We had the count and there was no problem.

Q. The normal 11 o'clock count? (61) A. Yes, The procedure that I disclosed to you, the normal routine.

Q. And the round you made was a fairly normal round. A. No problems.

Q. No problems. Well, then, you wrote up your report about what happened? A. Yes. Well, I started about 11:30, or so, after the count, because naturally I had to take the count with the Sergeant and there are certain duties to perform to get ready for the supervisory leaving. And I started the report around, say, 11:15 or 11:30, in that area.

> Mr. Pochoda: We are marking for identification, Plaintiff's Exhibit 2, the report from A. J. Connolly to Mr. O'Mara, Deputy Superintendent dated June 2, 1972.
>
> (Report from A. J. Connolly to O'Mara, dated June 2, 1972—marked for identification as Plaintiff's Exhibit 2, as of this date.)

Q. Now, in this report, you said certain inmates were the canvassers for the petition? A. Yes.

(62) Q. This information was what you obtained from other officers? A. Other officers; right.

Q. You don't have the— A. I don't have the officers that gave me the information, but they were all officers that gave me that information.

Q. Right. A. That, by the way, came about as a result of—that second report—

Q. Well, the second report was a single page dated June 2, 1972, marked for identification as Plaintiff's Exhibit 3.

> (Single Page Report dated June 2, 1972—marked for identification as Plaintiff's Exhibit 3, as of this date.)

Q. This came about when? A. That came about—that report was conveyed to me by Mr. Koch, he's the officer assigned to—what's the date on that?

Q. June 2nd. The same date.

Do you believe it's the wrong date? A. No, I have to check this. We were working that night. I possibly made a mistake and (63) placed the wrong date here. I can verify this by the next chart. Possibly, put the wrong date and it should have been June 3rd.

Q. Mr. Koch was not on duty June 2nd? A. No, no, no. This was an error on my part when I wrote this report this was probably June 3rd. I would have to verify the chart on that. I wrote the wrong date on that.

Q. Do you recall when you you got it, did Mr. Koch hand it to you, personally? A. No. He called me on the phone.

Q. Yes. A. And—

Q. The report is in your handwriting? A. Yes. Koch was an officer. I think he was assigned to—and don't quote me—I have to check the chart again. He called me on the phone and advised me that these people were circulating the petitions. That would be on June 3rd, too. That would be the following day.

Q. Do you recall if he said anything else that's not in the report about the people circulating the petition? A. Koch, there, again, gave an opinion. The (64) report in essence says, Koch said to me on the phone that Sosfry had encouraged Lucas to circulate the petition.

Q. Right.

But did he talk about the details of what happened when they circulated the petition or whatever? That's not in— A. No, he didn't go into details. He wasn't working that night.

Q. No, even now. Where did he get this information from, who was passing the petition? A. That you'd have to ask. This is, again, hearsay. Mr. Koch called me on the phone, advised me that this was so. I wrote this quickly. It was probably late at night. Ten or 11 o'clock Saturday night. I wrote this down and I sent this to Mr. O'Mara and I sent it in. That's why that is attached to this—it's not part of that report and is in more or less a social way rather than a communicative way.

Q. Right.

Were there any other reports that you made to any of the superiors about the petition? (65) A. No. Just that.

Q. Just that and this one. A. And that was added later, the next day, but definitely—I say Koch was not working that night.

Q. Did you receive from anybody of your superiors, any instructions, report or memoranda, statements whatever, about the passing of the petition, either June 2nd or on subsequent days, later days? A. You would have to clarify what you mean.

Q. Did you receive any instructions how to proceed about the petition or instructions about the union? A. No.

Q. Do you know if any were put out by the administration? A. No. After I made that report and after I submitted that second report, my involvement in the matter more or less, ceased.

Q. Right.

Now, this first report is dated June 2nd. A. That I can swear, is accurate and there's no (66) mistake.

Q. I am talking about Plaintiff's Exhibit 2, the one you made from 11:45— A. 11:15 to, say, beyond, I had written notes and I had to set it out in longhand and in my own handwriting. First I wrote it in pencil and then I—

Q. Were you asked, specifically, for a report by anybody? A. In my particular job, it's a necessity to make any reports of any unusual incidents and this was an extremely unusual incident and naturally one has to make reports.

Q. Right. A. I mean, he would be derelict in his duty if he didn't.

Q. You didn't receive a phone call to make the report? A. No. Oh, no. No, no, no. Positively not. I've been in the business too long. I take pride in my job. I never leave an institution unless I feel my work is completed. As a matter of fact, that night I didn't put in for overtime and I'm entitled to overtime.

Q. Right. Any other day, between June 3rd, for the next week or so, receive a specific request for a report about the union or the petition or anything like that? A. No. The events that transpired on June 2nd, 1972, that are in that report, more or less, ends my involvement in the matter.

Q. Do you, yourself, make any recommendations about what should happen with the people involved? A. No, I don't.

Q. Either orally or written? A. Not in that case. No advisements or didn't become involved in it.

Q. Either on June 2nd or for the next ten days? A. No, I didn't.

Q. So, after this report, the second report, that pretty much ended it. A. I would have to check that. That's not the date. It would have to be June 3rd.

Q. That pretty much ended your direct involvement in this situation? A. Right, and that was the end.

(68) Q. You were involved in discussions with other administrators about what to do about the situation? A. No. As I related before, on June 2nd, I was more or less, the 4 to 12 supervisor and then on June 3rd, I think I—I can't remember my tour of duty for that following week, but I more or less, worked the 4 to 12 shift, as a—see, there's a Captain in charge and because of my school program, Mr. Butler was very kind enough to leave me on the 4 to 12, so I could complete my education and I more or less, up to four weeks ago, spent most of my time on the 4 to 12. As a relief officer or in charge of the shift; normally a Captain.

Q. After June 2nd. Say, between June 3rd and June 10th, were you involved in any discussions about what should happen to people involved with the union? A. No, no. No, no, no. I wasn't involved.

Q. And you weren't involved or asked your opinion about whether certain people should be transferred from Wallkill? A. No, no, no.

(69) Q. During the entire evening of June 2nd, the number of personnel at the institution remained the same as any other night? A. Right, right.

Q. It wasn't supplemented by new people? A. No. The 14 people that I had mentioned previously.

Q. In terms of the incident, your main concern, as far as a possible problem, was the scene you described in the key room where the 20 to 30 people were? A. We, first of all, don't have the manpower to control any unusual situation, so in that case, any unusual incident, it's always best to keep on top of it and more or less, act as a preventive agency rather than let the thing develop. If anything had developed that night, I would have stepped in between them and talked to them myself.

Q. What I am asking is, besides the events you described, there was nothing else, or other incidents that took place that you were concerned about? A. Not that I'm aware of, no. There was nothing.

(70) Q. Do you know if any of the officers on duty that night met with administrators or Mr. Butler, who were on duty with you, or Supervisors that night, to discuss the incident, to make recommendations? A. No, definitely.

Q. Definitely not? A. No, it would have—the only one that he would have consulted with would have possibly been me.

Q. Since you were in charge that night? A. Since I was in charge I was ultimately responsible for what happened. He would have consulted with me. He didn't. I submitted the report. I had been in contact with him during the evening on the specified times I mentioned before and that was it. I went home and what happened during the day, you know, the next day—

Q. The usual procedure is, if Mr. Butler and any other Supervisor wants to know what happened on a shift, he would go to the person in charge of that shift for further information? (71) A. Well, he would go through channels, shall we say? In the case of this report, as you said, Exhibit 2, I naturally, made this report out to Mr. O'Mara who is my immediate superior, but in the sense that Mr. O'Mara lives off the grounds, in a situation like that I report to the Superintendent. Mr. Otis, I believe, was away. He was in Jersey or somewhere. So it was easier for me to contact Mr. Butler, but my duties say that I should, at least—you know, the chain of command had to be observed and I made the report to Mr. O'Mara.

Q. Mr. O'Mara was physically on duty that night? A. No, he wasn't.

Q. And neither was Mr. Otis? A. No, Mr. Otis was, I think away.

Q. Mr. Butler, you said lives on— A. He lives on—Mr. Otis lives on the property, but I believe Mr. Otis was away. I just don't know where he was, but he wasn't on the grounds.

Q. All right.

Just briefly, we talked about the general situation in Wallkill, as opposed to other (72) prisons.

In your opinion, there is quite a difference, I think, between Wallkiil and other institutions; is that right? A. Have you ever been in another institution?

Q. Not like you have; no. A. Yes, there is. I would say there is. I would have to say there is. I like the Wallkill Program. I think it's a good program.

Q. What are you referring to when you say the Wallkill Program? A. Well, the type of setting, no walls, no cell blocks. You know, small population. This is the future of the prison system right here.

Q. You think this has an effect, from your observation on the attitudes of the inmates themselves? A. I believe it, yes.

Q. I take it there is a difference in program, as well; specific programs, rehabilitation? A. Now, you're asking for an evaluation that I can't give. I can't compare one program to the other. All I can compare is the (73) physical setting, the size of the population, the atmosphere. Yes, I can—

Q. In all those ways you find a substantial difference between Wallkill and other institutions you've been at? A. Yes, indeed. Yes, indeed. A vast difference.

Q. There's much less restrictions on the inmates? More freedom at Wallkill? A. As I said, yes, Wallkill, the atmosphere is difference. The communication between the officers is vastly different.

Q. The number of restrictions on the inmates—freedom is greatly different? A. I would say so. I would be lying if I said it wasn't.

Q. And, in fact, inmates are allowed to join other kinds of groups, I take it, programs that go on here? A. You would have to say what programs you mean.

Q. J.C.'s and so forth? A. Yes, yes.

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Excerpt From Deposition of Sgt. Walter Alexander, Admitted at Trial as Part of Exhibit No. 1

[Exhibit No. 1, pp. 105-107].

(105) By Mr. Pachoda:

Q. You mentioned that some of the inmates were upset because they felt that their actions in signing the Petition might get them in trouble and that they could be identified; is that right? A. That's—identified by their own signatures, they could be identified. Not by me personally, because I had no knowledge whether they signed it or not.

Q. When you say that, do you mean that they were concerned, in terms of the Administration of the prison, they would be upset with them for signing this petition because their name would be on it? A. That seemed to be the feeling of the inmates. I have no idea what the official feeling of the Administration was.

Q. Just the feeling? A. The feeling of the inmates seemed to be that of, I might get myself in trouble, now that they—this thing seems to have been (106) brought to a head. Merely just to they signed it, no, because if they felt that way they would not have signed it in the beginning.

Q. So it was after the Liaison Committee went on the air— A. This Liaison Committee is a fairly new thing in the institution. The Liaison Committee, supposedly—this is the word we got later, that they thought they were doing it because of the Liaison Committee's sanction.

Q. Yes. A. And that they said, here's the thing to do. We'll sign it because the Liaison Committee says it's okay. They're the new thing. They're talking with the Administration, so it will be okay now.

Q. And when they found out that the Liaison Committee was not in favor of it they felt that they could possibly get in some trouble—the inmates now? A. The Liaison Committee was not in favor of it? They had not sanctioned it. The inmates had been told when they signed it.

Q. After they found out that the Liaison Committee (107) did not sanction it, some of the inmates thought that they could create trouble with the Administration, for having their names on it? A. That seemed to be the inmates' feeling.

Q. Let me ask you this, then: You said you received some reports during that week, oral reports. Did you receive any written report from any officer? A. I received none, no.

Q. Did you make out any? A. No. None.

Q. About any specific incident? A. No, I did not. There was nothing that I could point to specifically that would say such-and-such is the case.

Q. Right.

Mr. Pachoda: I have no further questions.

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Excerpt From Deposition of Warren Barnes, Admitted at Trial as Part of Exhibit No. 1

[Exhibit No. 1, pp. 130-131].

(130) Q. Were you aware generally of a feeling that might generate physical violence in the institution during the week of June 2nd through June 8th? A. My impression with the institution was no, there was no threat of physical violence as such, though there was a continuing unrest regarding this action of the Liaison Committee, as well as, and primarily and I may quote my feelings as written—Am I going to get into any difficulty about this?

Q. Inmates were concerned at that point and tense to a certain extent because they thought they may get into some difficulty for signing the petition? A. A concern heightened by our announcement.

Q. Right. And that created the tension during that week at Wallkill? (131) A. That assisted.

Q. At some point, you resigned from the Committee; is that right? A. Yes, I did.

Q. It was after at least that week of June 9th? A. Sometime after that. Now, that I'm thinking, it would have to be roughly—I remember a series of vague events—it would have to be three weeks to two weeks.

Q. And a replacement got selected or how did a replacement get selected? A. There was no replacement.

Q. At the moment there were five members of the Committee? A. I can't say for the moment, but no representative for the Liaison Committee on the gallery, anyway.

Q. Was the Liaison Committee involved in generally now —with setting up the rules in the institution or regulations in terms of the behavior of inmates? A. None whatsoever. We only declare and define what we don't do.

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Excerpt From Deposition of Assistant Deputy Superintendent Edward O'Mara, Admitted as Part of Exhibit No. 2 at Trial.

[Exhibit No. 2, pp. 32-33, 44-62].

(32) Q. Were you at the prison during the weekend? A. I would assume I worked that weekend; yes.

Q. Did— A. I know I did. I was there.

Q. I see. Going to the weekend, were you on duty Friday evening, June 2nd? A. No, I wasn't.

Q. You were not physically on duty Friday evening? A. No.

Q. Were you on duty, Saturday, June 3rd? A. I was.

Q. Do you recall the hours you were on duty? A. Chances are, it was 8 to 4.

Q. Probably 8 to 4? A. Probably.

Q. We could check that by the records? A. I think so. It was either 7 to 3 or 8 to 4.

Q. I see. And then, on Sunday— A. It would definitely be 8 to 4.

Q. Definitely be 8 to 4.

Now, are you basing this first sentence on your own personal observations or (33) reports you received from personnel here at the institution, when you say there was a considerable amount of abnormal activity? A. I am sure that I based it on reports received from other people.

Q. Do you remember who the persons were that you received those reports from? A. Not per se, but I think Lieutenant Connolly called me at my home, Friday night or —it had to be Friday night.

Q. Do you recall what Mr. Connolly said at that point? A. No, it had something to do with this activity around the institution.

Q. Let me show you Plaintiff's Exhibit 2 and 3 and ask you if you've seen those before?

(Handing.)

A. Well, I'm not sure if I've seen it, per se, I don't know, but I'm sure we probably discussed it with Connolly.

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(44) Q. And under what circumstances did you decide to write this report? A. Well, the fact that I was in charge of the institution over the weekend, certain knowledge came to my attention that I felt should be passed on.

Q. I see. So you felt in your normal course of duty that you should write this report? A. Of course. Sure.

Q. Have you been asked by anybody specifically to write this report and indicate who you felt was involved in the petition? A. No.

Q. No? A. No. No.

Q. Now, on Page 2 of this Exhibit, the first sentence reads, "The following named inmates have reported as being very active in circulating the petition." Again, I take it, that you, yourself—this is not firsthand information, but reports that were made to you? A. That's right.

(45) Q. Now, the first name is Sostra and next to it you have, prime mover and instigator. How did you receive that information? A. I can't tell you that, but I assume from people who gave information to me; employees and some inmates.

Q. Some inmates also told you this? You don't know the names of any of these people? A. Not offhand.

Q. And what evidence then did they have that Mr. Sostra was the prime moving instigator? A. I am not sure. I don't know.

Q. The name, next name is Lucas, No. 9659 and next to his name, you have, reports indicate that he and Sostra in concert with legal aid instigated the petition. Can you indicate, if you know, who made that report? A. I don't know that offhand. I don't know.

Q. You don't know, yourself, personally, for example, if Mr. Lucas ever spoke to anybody from the Legal Aid Society? A. Right.

Q. The third name is No. 9917, Passanante and next (46) to his name, you have, had petition in possession and was also reported by Lieutenant Connolly as expediter. So you received information from Lieutenant Connolly about Passanante? A. That's right.

Q. And, then, the other incident about Mr. Weller, you believe, had taken the petition from Passanante? A. Right.

Q. And the next name is No. 9372, Kenny, and have next to his name, Actively seeking signatures. Again, this is also a report you received from someone? A. Somewhere along the line; right.

Q. You are not sure where? A. Not certain.

Q. Next name is No. 9673, Oliver, and you also have, actively seeking signatures. A. This information came to me, but how, I don't really recall.

Q. No. 9890, Rosario, actively seeking signatures. Has been very active with Sostra of late. Again, all of that comes to you from other people? (47) A. right.

Q. No. 9704, Newkirk, reported by Lieutenant Connolly, as actively involved in securing signatures. That came through Lieutenant Connolly, I take it? A. I think so.

Q. Further conversations, to the best of your knowledge, after the Friday night phone call with Lieutenant Connolly about what took place on Friday night? A. I assume so. I don't remember offhand. I don't know.

Q. Number—the last name is No. 9272, Rodriguez, and next to his name, it says, Reported as being Sostra's contact with the Spanish population. I again, I assume that's reported— A. I picked up somewheres along the line.

Q. Did, you, yourself, speak to any one of these named inmates? A. No, I didn't. Oh, Passanante. I remember talking to Passanante.

Q. You did not speak to anyone but Passanante? A. That's right.

Q. Do you know of any of the reports that you received (48) from Officers, if they were based on conversations with any of these inmates, except for Passanante? A. I don't know that.

Q. You don't know that? A. No.

Q. All right. Now, when did you speak to Mr. Passanante? A. I believe I spoke to him the morning that they picked up the petition.

Q. That was Saturday morning? A. Saturday morning.

Q. And you called Mr. Passanante in? A. He was right there knocking on the door.

Q. And what was he concerned with? A. I don't know. He was concerned about the fact that they had taken the petition from him.

Q. Did you explain that it was necessary to do this? A. I assume I did.

Q. Was there further discussion about the petition, or the union, with Mr. Passanante, at that time? A. I don't remember. I don't recall.

Q. Did you ask Mr. Passanante who else was involved in the union? (49) A. I may have. I may have. I don't know.

Q. But this report itself was taken— A. I would assume I asked him, but I don't—

Q. Do you know if this report is, in any way, based on the information you received from Mr. Passanante? A. The entire report is based on information I received from Passanante?

Q. Well— A. Or if any part of it is based on the report I received from Passanante?

Q. Yes. A. Again, I will assume that I must have received some information from Passanante, which I probably incorporated in the report. I don't know. I don't know specifics.

Q. But, I take it, there were also other reports from correction officials on each and every one of these inmates that were involved in some way, with the exception of Passanante, in terms of the comments you have here. You had other independent reports from correction officials—did you? Did you have other reports from personnel, other (50) correction personnel? A. Written reports?

Q. Written or oral? A. I assume that's so. I assume that's so.

Q. Now, you go on to say that there is a rumor received from several sources, that an attempt is being made to dump Barnes off the ILC. Can you explain in that who is Barnes and the ILC? A. Barnes is a member of the Inmate Liaison Committee and if I am right, I think I am thinking right, I think that Barnes made a speech to the population on Friday night and that the Liaison Committee was not behind this particular petition, and of course, the story the next day was ripe, there were rumors running that they were going to try to dump Barnes because of his activities the night before.

Q. Again, do you know, to the best of your recollection, specifically, what the several sources were? A. No, I can't —I don't know.

Q. Again, you don't have personal information about this, personally? You did not personally know, (51) for example, if Sostra may have been behind this? A. No, no.

Q. And then your final concluding sentence, when you say, "It seems quite evident that Sostra had seized on this issue as a means of embarrassing the administration, and thereby reasserting his preeminence as the great emancipator." This conclusion is based on these other reports that you received? A. I would assume so.

Q. Do you know what happened to this report after you wrote it? A. Well, I sent it to Mr. Butler.

Q. That probably was June 5th, Monday? A. Oh, yes.

Q. Did Mr. Butler then question you about it? At any subsequent time on Monday or Tuesday or Wednesday? A. I don't know. I don't know.

Q. Exhibit 13, which is a report dated June 6th, do you recall writing that on Tuesday, June 6th? A. Yes, I did.

(52) Q. This, again, is a report to Mr. Butler from Mr. O'Mara, and the subject is Recommendation for Transfer. And the first sentence, states, "After consultation, Lieutenant Henry and Stark, as well as several officers, the following named inmates are recommended for transfer:" Is this a consultation that you had with Lieutenant Henry? A. Yes, sir.

Q. And when did this consultation take place? A. I would assume that morning.

Q. The morning of June 6th? A. Yes.

Q. And Lieutenant Henry is a Correction Officer here at Wallkill? A. He is a Lieutenant here at Wallkill.

Q. And what information did Lieutenant Henry have about the— A. What specific information?

Q. Yes. I don't know how this contributes to the—you mean, specifically?

Q. Yes. (53) A. I don't know.

Q. Did you meet Lieutenant Stark also on that morning? A. Yes, I did.

Q. Was the meeting together, at one time? A. I don't know. I don't think that we had a formal meeting; perhaps, I went around to see Henry and see Stark and these other officers. I think that perhaps that's the way it was done.

Q. I see. Were there any specific officers that you selected as having more information about this than others? A. Not necessarily; not necessarily.

Q. It was kind of a random selection? A. I would think so. I would think so.

Q. Do you know if Lieutenant Henry was on duty on the night of June 2nd? A. I would not believe so. If Lieutenant Connolly was on, then Lieutenant Henry would not be on. So the chances of the two of them being on would be very slim.

Q. I see. The same would be true for Lieutenant Stark. He would not have been on either? (54) A. I don't think so, no.

Q. Did Lieutenant Henry have firsthand knowledge of the activities, or the alleged activities of the named inmates? A. I don't know that either.

Mr. Greenwald: Did he have firsthand knowledge?

The Witness: I don't know that.

Q. Do you know if he, when you wrote this report, if he, himself, had actually observed what took place? A. I don't know.

Q. And that would be the same for Lieutenant Stark? A. I assume so; right.

Q. When you say inquiries from several officers, did you know, again, who those officers were? A. No.

Q. You don't know if they were passing on information that they had seen with their own eyes, or just received in the general course of duty? A. That's right.

Q. Again, before you made this report, had you spoken to any of the other inmates named? That is Sostra, Lucas, Newkirk, Rosario, Rodriguez, Oliver (55) Kenny—and of course, Mr. Passanante, you did speak to. But any of these? A. No.

Q. The last sentence reads, "Passanante is very scared and apparently willing to cooperate." What did you base that conclusion on? A. Well, I based that conclusion on the fact that he was foolish to lose the petition and he was quite scared. He was quite concerned that it might affect him in some way. I don't know, how it would affect him; whether he felt that the people behind the petition might do something. I don't know. But he gave me the appearance of being quite scared.

Q. He was nervous— A. Right.

Q. —about some reprisals being taken? A. Yes.

Q. Was he nervous that possibly, whether it was justified or not, that the Administration would be unhappy for him for this activity?

> Mr. Greenwald: Wait a minute. Purely speculative, as to why he was nervous.
>
> (56) Mr. Pochoda: I am asking—the objection is noted.

Q. Did Mr. Passanante indicate that he was concerned about possible reprisals from the prison administration? A. I don't know that specifically, no.

Q. He did not indicate that? A. I don't think so.

Q. He did not indicate what he was nervous and scared about? A. No.

Q. When you say, apparently willing to cooperate, what does that mean? A. Well, I felt that if we had done a little talking to Passanante, we might find out a little bit more about how this thing originated and so on.

Q. Was more talking done with Passanante after that Saturday morning discussion?

> Mr. Greenwald: If you know.

A. I think so. I don't know, but I assume, if this was my feeling, then I would probably make an effort to get more information.

Q. And do you recall meeting with Mr. Passanante then, after that Saturday morning? (57) A. I don't recall, specifically. I would assume that I did.

Q. But no information stands out in your mind? A. No.

Q. No? A. Not particularly, no.

Q. Under what circumstances was this report, Exhibit 13, made? A. I am going to assume again—I think I'm right—that Mr. Butler told me to go out and find out what I could and who was responsible, by talking to the various officers and people. Based on my talking to Lieutenant Henry and Stark and the officers, these names came up as the prime movers of this thing. This is my reply to Butler's request to go and find out.

Q. Do you recall when Mr. Butler made this request? I recall when he made it?

Q. Yes. A. No. I would assume it was made the morning that the report was written.

Q. An oral request? A. I think so, yes.

(58) Q. Prior to this report, Exhibit 13, I take it some discussion about transfers and the possibility of transfers had taken place? A. With who?

Q. With Mr. Butler or Mr. Otis or some people in the institution or was this subject, Recommendation for Transfer, was this the first time, to your knowledge, that yourself, or anyone in the institution, talked about the possibility of transfer, your report here? A. Transfer in connection with this incident?

Q. Yes. A. I'm not certain if that's the first time, but

I assume that that was the reason for me going out and getting the information and writing the report.

Q. Right. So that prior to writing the report, there was some feeling that possibly a transfer would be called for in this case because of the activity of the petition? A. I think that's a reasonable assumption, yes.

Q. Do you recall, to the best of your knowledge, who had mentioned first to you, the possibility of a (59) transfer? A. No, I don't, but that is the Superintendent's prerogative. I don't know.

Q. So, did you attempt to make it clear that you felt —or you attempted to find out who was the person most involved with the union petition and these are the ones you felt should be recommended for transfer? A. I think that's right.

Q. Let me ask this just for background. Is this a usual procedure, that recommendation for transfer will be made by you? A. By the Deputy Superintendent.

Q. By the Deputy Superintendent. I see. And then—but you— A. I think I was acting in that capacity that day. I believe I was, anyway.

Q. I see. So you really took the place of the Deputy Superintendent in this case? A. Yes.

Q. And you received information with—from your consultations with different officers that these inmates were the most active in the activity that (60) took place concerning the union petition; is that right? A. That seems so.

Q. And on that basis, you recommended them for transfer; is that right? A. That's right.

Q. Did you speak to any of the inmates in the Liaison Committee prior to making this report? A. You mean, formally?

Q. Or informally, about the events that led to the recommendation for transfer? A. I'm not sure of that. I know I didn't formally, but I may have informally, but I'm not sure.

Q. Now, this report, I take it, was sent to Mr. Butler? A. That's right.

Q. And probably arrived on the same date, June 6, 1972? A. Yes, sir.

Q. Did Mr. Butler, then, have further discussion with you about the subject of this report? A. I don't remember that. I don't know.

Q. Do you recall having further—well, did you make (61) any other reports. Let me put it that way. Written reports about possible recommendations for transfer, or any other written reports about who was involved in the petition? Besides these two exhibits here? A. No, not to my knowledge.

Q. Do you recall any meeting that you took part in with Mr. Butler and perhaps, other persons, who might have knowledge about the union activities, to discuss the situation and possible transfer? A. Gee, I don't remember. No, I don't.

Q. To your best of your recollection, after you submitted this report, the decision was then up to Mr. Butler? A. That's right.

Q. And at some point later, he decided to transfer? A. He recommended that they be transferred.

Q. I see. Did you engage in any further discussion about any of these inmates individually, as to whether some of them should really be transferred and some shouldn't? Or that was pretty much the end of this recommendation for the eight of them to be transferred? (62) A. I think as far as I was concerned, that was the end of my activity, as far as the recommendation goes. Mr. Butler made his own decisions after that.

Excerpt From Deposition of Assistant Deputy Superintendent Edward O'Mara, Admitted as Part of Exhibit No. 2 at Trial.

Q. I see. And again, this report on June 6th, Exhibit 13, as in Exhibit 12, the—was based on information you received from other officers about the activities that took place on the weekend? A. That's right.

Mr. Pochoda: I have no further questions.

* * * * * *

Exhibit No. 3 at Trial.

THE WALLKILL STORY

Wallkill Correctional Facility is the only medium security type Facility in the State of New York. It was established in 1932 for training and rehabilitation of convicted adult felons.

Wallkill does not receive any men committed directly from the courts. In 1940 a method of selection of prisoners from maximum security institutions was established. The selection procedure consists of periodic visits to the maximum security facilities by the Wallkill Correctional Facility Guidance Supervisor and the Vocational Supervisor. These men make an extensive study of the records of all inmates committed to the maximum security facility since their last visit to that institution. Those meeting the Wallkill criteria, and are likely to benefit from its program, are then interviewed and those passed by the selection committee are referred to the Superintendent of Wallkill, who screens the list and makes his recommendations to the Commissioner of Correctional Services for transfer. The criteria for selection provides that first offenders receive preference, however, the type of offense does not necessarily rule out a man for transfer. The idea is to select a man who will adjust to the Wallkill type of administration and be likely to benefit from its program. An exception to the foregoing selection procedure is the transfer of inmates from the Elmira Reception Center which was established in 1945. These young men range in age from sixteen to twenty-one inclusive. Those who appear to need the kind of training provided at Wallkill are selected by the Center Staff and sent to the Wallkill Correctional Facility. Approximately ten percent of the Wallkill population has been transferred from the Reception Center.

Custody and discipline, though less evident at Wallkill than at other facilities, are nevertheless important administrative considerations. The lack of physical and mechanical barriers are compensated for by more accurate classification, individualized treatment, good management of an alert and well trained staff, and development in the inmate of a sense of personal responsibility.

In order to achieve the aims for which Wallkill Correctional Facility was organized, an extensive program has been developed. This program is not superimposed on the men, but is decided upon only after careful consideration of each individual case by the members of the Program Committee and, finally, adopted with the active participation and acceptance by the inmate concerned. A psychologist and psychiatrist are available to inmates for counseling, guidance and testing.

A program of Group Counseling, led by trained staff members is available for inmates with certain types of problems. These sessions, which are not dominated by the employee in charge, give the men an opportunity among themselves to work out their personal problems, and even to "let off steam".

The leader is simply present to help keep the men on subjects which they set out to discuss and to help them arrive at conclusions. The Group Counseling program in New York was started at the Wallkill Correctional Facility. It has succeeded to the point where it has since been inaugurated in numerous other New York State Correctional Facilities.

The Service Unit, a cooperative agency staffed by members of the Department of Correctional Services Mental Hygiene and the Division of Parole, functions as the coordinator of the various services available to the inmate as a casework agency. It is concerned with the follow-up and the progress of the man during his stay at Wallkill, with a view to continuous planning in terms of the man's capabilities for post-institutional adjustment. Through personal interviews, liberal correspondence privileges, and daily visiting privileges, the Service Unit attempts to strengthen the inmates' interest and relationship with the family and responsible community members.

Educational Achievement Tests, given to men upon reception, show that their school rating varies from complete illiteracy all the way through high school. No one is compelled to take any form of training unless he is not able to read and write simple English. To meet the demands created by the individual differences of the inmates, three specific types of education have been made available:

1. *Grammar School Subjects*—leading to a grammar school diploma.
2. *High School Subjects*—These courses are offered to satisfy individual needs in areas of particular interest or weaknesses of the men.
3. *Home Study Courses*—are offered from recognized Correspondence Schools and approved Colleges and Universities.

There are also scholarships in graphic arts made available to talented inmates by the Famous Artists Schools.

The ability to earn a living for one's self and family is necessary for success in the community. Therefore, teaching men how to work and how to practice a marketable vocation is an important part of the Wallkill program.

The material taught in each trade is selected after an analysis of industrial requirements. The aim is to develop skills which will enable a student to qualify in a paying occupation. While developing manipulative skills, every man enrolled in organized trade training must pursue studies in related theory and trade information.

On the job experience is afforded to advanced students in the vocations when they become qualified. Their training is thus continued under expert supervision on live work. In the building trades, for example, it includes the manufacture of cement blocks. Many thousands of dollars are saved for the State each year by students in the vocational automotive shop. These men repair cars that have become worn or are completely wrecked. This training includes body and fender work and upholstering and painting. When a car comes out of this shop it is in perfect operating condition and often looks like a new car. All work must conform to the high standards demanded by the State.

In many of our shops work is done for numerous other State Departments, particularly the Conservation Department. This institution has furnished ski lifts, park and other furniture and work on mechanical equipment. We do a great deal of silk screen work for this department.

Signs of all types are produced by the silk screen process and may be seen throughout the State.

Organized Trade Training is conducted in the following areas:

Building Trades:

Carpentry, Electricity, Plumbing and Heating and Masonry

Industrial Trades:

Auto Mechanics, Blacksmithing, Machine Shop, Welding, Mechanical Opthalmic Optics, and Sheet Metal and Heating

Service Trades:

Baking, Barbering, Food Service, Laundering, Tailoring, Radio and Television Repairs, and Steam Engineering and general maintenance work

Wallkill Correctional Facility maintains a large farm of approximately 850 acres. A large variety of food crops, vegetables, milk, pork, chickens, eggs and apples are produced and supplied to other facilities, as well as Wallkill. (Milk is produced for Wallkill and Ossining Correctional Facilities). The farm work is carried on in such a manner as to teach those from agricultural areas improved farming methods. Garden products of a large variety are prepared in a modern canning plant maintained by the Wallkill Correctional Facility.

International Correspondence School courses in many vocational areas are provided for those who desire them. Men wishing to increase their ability in public speaking may also enroll in Dale Carnegie Courses.

Under the direction of the Music Teacher, a large number of men, many of whom have never played instruments, become competent musicians and, eventually members of the institutional music organizations.

Great emphasis is placed upon the importance of religion in the rehabilitative program. This work is under the leadership of resident Chaplains, one of the Catholic and one of the Protestant faiths. There is also a part-time Chaplain of the Jewish faith. Christian Science Services are also provided. The Chaplains provide regular worship services on Sundays and Holy Days, conduct classes of instruction throughout the year and are available for counseling and guidance with the inmate during the week. They all perform a valuable function in ministering to the needs and problems of inmate's families.

Exhibit No. 3 at Trial.

The nature of congregate living makes strenuous demands on good health, sanitary, and hygienic conditions among the inmate population. Supervising this important area, prescribing high standards of preventive medicine and administering to the ill, is a medical staff composed of a resident physician, five registered nurses, a visiting surgeon, an optometrist, an opthalmologist and a part-time dentist. Emphasis is placed on the prophylatic type of treatment as well as the therapeutic. The food served is wholesome but does not exceed the cost allotment of the other correctional facilities.

An excellent recreational program under a trained supervisor is maintained. This man encourages participation in sports and tournaments in the institution. One of the chief objectives is to teach men to play fairly and familiarize them with the rules of good sportsmanship. This is a particular need among city raised individuals who have had little opportunity for development of cooperative sportsmanship.

Exhibit No. 4 at Trial.

Authorization For Union Membership

We, the undersigned inmates at Wallkill, Correctional Facility, Wallkill, New York, do hereby join the Prisoners' Labor Union at Wallkill and authorize it or its agents to act as our collective bargaining agent in all matters pertaining to our wages, hours and conditions of employment with any and all persons or agencies having responsibility for or control of the foregoing.

Signature	Print Name	Number	Date

Exhibit No. 5 at Trial—Letter From Daniel Pochoda, Esq., to New York State Public Employees Relations Board.

July 12, 1972

Mr. Paul Klein
Director of Public Employment
Practices and Representation
Public Employees Relation Board
50 Wolf Road
Albany, New York 12205

Dear Mr. Klein:

Enclosed are those original signed authorizations presently in my possession, as well as an alphabetized list of these 199 persons.

Sincerely,

Daniel Pochoda
Staff Counsel

DP/ms
enc.

Exhibit No. 6 at Trial.

State of New York
Public Employment Relations Board

PETITION

FOR CERTIFICATION AND/OR DECERTIFICATION

INSTRUCTION. Submit an original and three (3) copies of this Petition to the Director of Public Employment Practices and Representation, New York State Public Employment Relations Board, 50 Wolf Road, Albany, N.Y. 12205. If more space is required for any item, attach additional sheets, numbering item accordingly.

DO NOT WRITE IN THIS SPACE

Case No.:

Date Filed:

The petitioner alleges that the following circumstances exist and requests that the New York State Public Employment Relations Board proceed under its proper authority.

Purpose of this Petition. (Check only the boxes that are appropriate).

A. ☒ Certification of negotiating representative—A substantial number of employees wish to be represented for purposes of collective negotiations by Petitioner and Petitioner desires to be certified as representative of the employees for purposes of collective negotiations pursuant to Section 207 of the Law.

B. ☐ Representation (Employer)—One or more employee organizations have presented a claim to Petitioner to be recognized as the negotiating representative of employees of Petitioner.

C. ☐ Decertification—A substantial number of employees assert that the currently recognized or certified negotiating representative is not their representative as defined in Section 207 of the Law.

Name of Petitioner:

Prisoner's Labor Union at Wallkill.

Affiliation, if any:

District 65, Distributive Workers of America (see item 15).

Address of Petitioner (No. & Street, City & Zip Code):
c/o Prisoners Rights' Project, 119 Fifth Avenue New York, N.Y. 10003.

Name of Employer:

State of New York, Department of Correctional Services.

Address of Employer (No. & Street, City & Zip Code):

State Office Building, P. O. Box 7033, Albany, New York 12225.

Description of negotiating unit claimed to be appropriate. (Be complete and specific, using job titles):

Included:

All inmates incarcerated at Wallkill Correctional Facility Wallkill, New York 12589.

Excluded:

All other employees.

6a. Number of employees in unit: 490.

6b. Is this Petition supported by:

(1) 10% or more of the employees in the unit?
☒ Yes ☐ No.

(2) 30% or more of the employees in the unit?
☒ Yes ☐ No.

Does the Petitioner seek exclusive rights of representation? ☒ Yes ☐ No.

Request for recognition as negotiating representative was made 6/9/72.

☐ Has not replied. (Explain on rider, if necessary).

☒ Declined recognition on 6/13/72.

Recognized or certified negotiating agent:

Name: None.

Address:

(If there is none, so state).

Affiliation:

Date of recognition or certification:

10. Employee organizations other than Petitioner (and other than those named in Item 9 above) which claim recognition as negotiating representative, and other employee organizations known to have an interest in representing any employees in the unit described in Item 6 above. (If none, so state).

Exhibit No. 6 at Trial.

Name	*Address*	*Affiliation*	*Date of Claim (Required only if Petition is filed by employer)*

1. If the above-named employer is a party to a contract dealing with terms and conditions of employment: (If there is none, so state).
   - (a) Name of the other party to the contract: District Counsel 82, AFSCME AFL-CIO
   - (b) Date of expiration of the contract: ....
   - (c) The negotiating unit specified in the contract: Correctional Officers
   - (d) Is a copy of the contract attached? ☐ Yes ☒ No
2. Is this matter subject to Section 206.1 or 212 of the Law? ☐ Yes ☒ No
3. If you have checked Box 1. A. above:
   - (a) If an employee organization, have you filed financial reports with the New York State Department of Labor as required by Labor Law § 726? ☐ Yes ☒ No; or with the Board of Regents as required by Education Law § 237? ☐ Yes ☒ No

     If a membership corporation, was your certificate of incorporation approved by the New York State Board of Standards and Appeals pursuant to Membership Corporation Law § 11(1)(a)? ☐ Yes ☒ No
   - (b) Do you affirm that you and the employee organization that you represent or support, do not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist, or participate in such a strike? ☒ Yes ☐ No.

Exhibit No. 6 at Trial.

4. If you have checked Box 1. C. above:
   - (a) State the grounds upon which the certification should be revoked or the recognition annulled.
   - (b) Has the employee organization currently recognized or certified by the public employer engaged in a strike or caused, instigated, encouraged or condoned a strike against any government? ☐ Yes ☐ No
   - (c) Is the employee organization currently recognized or certified designated as an exclusive negotiating representative? ☐ Yes ☐ No
5. Include a clear and concise statement of any other relevant facts. The Affiliation referred to in item 2 is subject to ratification by the membership of both unions.

   I declare that I have read the above Petition and that the statements herein are true to the best of my knowledge and belief.

   Prisoners Labor Union at Green Haven
   (Petitioner and Affiliation, if any)

   Attorney
   By ....
   (Signature of representative or person Filing Petition) (Title, if any)

Daniel Pochoda
Dated: June 26, 1972

ERB 1 (9-69)

Exhibit No. 7 at Trial.

Dated: June 5, 1972

To: H. N. Butler, Superintendent

From: E. O'Mara, Assistant Deputy Superintendent

Subject: Abnormal inmate activity.

During the weekend there was a considerable amount of abnormal activity among the inmate population.

As you are aware, A. Connolly, Lt. reported a petition relative to a "Prisoners Labor Union" was being widely circulated among the population for signature. This activity took place on Friday evening, June 2, 1972 and continued to a lesser degree on Saturday, June 3, 1972. A copy of the petition was confiscated from #9917 Passanante, which contained three (3) names. Inquiring as to source of the paper and printing indicate that it was introduced by outside sources. It has been reliably reported a petition with 225-250 signatures is in the population. Attached to the confiscated petition was a newspaper clipping of the "Labor Union" incident at Green Haven Correctional Facility with a picture of Rep. Herman Badillo posted to it.

Several officers have reported that individual inmates expressed regret and apprehension about having signed the petition. All employees feel certain that #9273 Sostre is behind all of this activity. He was observed moving all over the institution on Friday evening and again on Saturday in the A.M. There is also a rumor that individual inmates assigned to the Main Shop have been urged not to report to work on the Ambulance Building project unless monetary considerations are exercised.

Is it coincidental that this activity sprung into being shortly after the Inmate Laison Committee raised the subject of "Premium Wages" for "off the institution grounds work"? I know the I.L.C. has disavowed any part in this activity but I wonder about the timing.

On Sunday, June 4, 1972 I received a phone call from Lt. McMahon informing me that information had been received indicating some kind of trouble on C&D galleries at 7:00 A.M. I reported to the institution to assist but the rumor proved to be false. However, several officers reported they had received information that during the move on Saturday evening there was a considerable amount of vocal expression relative to race expressed while the lights were out. Evidently the picture shown denoted racial conflict and some members of the population reacted to it.

As of this writing at 11:30 A.M., Sunday, June 4, 1972 there is no evidence to indicate any undue problems.

The following named inmates have been reported as being very active in circulating the petition.

#9273 Sostre—The prime mover and instigator.

#9659 Lucas—Reports indicate that he & Sostre in consort with Legal Aid instigated petition.

#9917 Passanante—Had petition in possession and and also reported by Lt. Connolly as expediter.

#9372 Kenny—Actively seeking signatures.

#9673 Oliver—Actively seeking signatures.

#9890 Rosario—Actively seeking signatures—has been very active with Sostre of late.

#9704 Newkirk—Reported by Lt. Connolly as actively involved in securing signatures.

Exhibit No. 7 at Trial.

#9272 Rodriquez—Reported as being Sostre's contact contact with the Spanish population.

There is a rumor, received from several sources that an attempt is being made to dump Barnes off the I.L.C. and that Sostre is behind this. I have not been able to figure how this fits in with the recent activity.

It seems quite evident that Sostre has seized on this issue as a means of embarrassing the Administration and thereby reasserting his pre-eminence as the great emancipator.

Respectfully submitted

Edward O'Mara
E. O'Mara
Assistant Deputy Superintendent

EO/fe
cc: File

Exhibit No. 8 at Trial.

To: Mr. Butler, Superintendent

From: Ed O'Mara, Asst. Deputy Superintendent

Date: June 6, 1972

Subj: Recommendation for Transfer.

After consultation with Lt's Henry and Stark as well as inquiries to several officers the following named inmates are recommended for transfer in the order named:

1. 9273 Sostre
2. 9659 Lucas
3. 9704 Newkirk
4. 9890 Rosario
5. 9272 Rodriguez
6. 9673 Oliver
7. 9372 Kenny
8. 9917 Passanante

Passanante very scared and is apparently willing to cooperate.

Ed O'Mara
Ed O'Mara
Asst. Deputy Superintendent

Exhibit No. 9 at Trial.

WALLKILL PRISON
INTER DEPARTMENTAL COMMUNICATIONS

Date June 2, 1972

FROM: A.J. CONNOLLY

TO: E. O'MARA, Dept. Supt.

SUBJECT: Circulation of Petition for Inmate Union

At 6 P.M. this evening C.O. Blake informed me that he observed a petition being circulated by inmates 9273 Sostre and 9890 Rosario D-1-18. He believed the petition concerned a union for the inmates.

At 7:15 P.M. C-1-29 came to me and told me that a serious situation was developing in the institution. He was asked to sign a petition for the organization of an inmate union. He said that he refused because the petition had not been cleared through the Inmate Liason Committee. He said that eight or nine inmates were canvassing the population for signatures. A newspaper article was attached to the petition. The article pertains to Herman Badillo's opinion regarding Inmate Union. He believes that inmates have the right to organize. [name deleted] felt that a prison setting is not the proper place for a union.

Mr. Butler was contacted and he advised me to convey all the information regarding the petition to the Liason Committee. They convened, and when they adjourned, requested they make a statement to the population over the P.A. They also requested that the statement be posted on all galleries. Mr. Butler approved these requests. Reaction after the announcement was observed at the key room. It appeared that some had signed the petition without reading it but there were some who felt that they should be able to sign any petition.

Exhibit No. 9 at Trial.

The following inmates were canvassers for the petition:

9273	Sostre	B-3-24	idle
9890	Rosario	D-1-18	Laundry
9704	Newkirk	B-1-21	Trucks
9372	Kinney	A-3-18	Kitchen
9673	Oliver	B-1-30	Halls AB

Possibly, you can ascertain the rest of the group tomorrow.

Respectfully,

A.J. CONNOLLY

Exhibit No. 10 at Trial, Letter From Petitioner Butler to Superintendent Henderson, Auburn Correctional Facility.

July 13, 1972

Confidential

Superintendent Robert Henderson
Auburn Correctional Facility
Auburn, New York

RE: David Rodriguez—former Wk #9272

Dear Superintendent Henderson:

As a result of a continuing investigation concerning the incident which resulted in the transfer of David Rodriguez to your Facility, it has been determined that he was not as actively involved as our initial investigation indicated.

Although I do not think he should be returned to Wallkill, we do think that this information should be made available to those persons who are responsible for preparing his parole summary. He is presently eligible for parole on October 19, 1972, according to our records.

Very truly yours,

Harold N. Butler
Superintendent

HNB:s

Exhibit "B" at Trial.

CLINTON PRISON

REHABILITATION PROGRAMS AND SERVICES

I. Education

A. *General Education Classes*	*Grades*
Beginners Illiterate	1–2
Spanish-English Illiterate	1–2
Intermediate	3–4
Remedial Arithmetic	1–4
Advanced English	5–6
Advanced Mathematics	5–6
Junior High School English	7–8
Junior High School Mathematics	7–8
Junior High School Literature	7–8
High School Equivalency	7–10+
Citizenship and Government	8–10+
World History	9–10
American History	9–11+
High School English	9–12
Bookkeeping I	9–11
Bookkeeping II	10–12
Business Mathematics	9+
Elementary Algebra	10
Plane Geometry	9–10
Intermediate Algebra	11
Trigonometry	12
Solid Geometry	12
Spanish I	9–10
Spanish II and III	10–12
Commercial Art	–
Fine Art	–
Typewriting	8–12

Programmed Courses	*Grades*
Arithmetic of Whole Numbers I	1–2
Junior High School Mathematics I	7
Decimals and Percentage I	5
Decimals and Percentage II	6
Fractions I	4
Fractions II	5
First Year Algebra	9–10
Second Year Algebra	10-11
Plane Geometry	9–10
Calculus I	12–13
Calculus II	12–14
Contract Bridge	10+
Chess	4+
Mechanics	8–10
Motion	8–10
Meteorology	8–10
Map Reading	6–8
Business Mathematics	9–10
Accounting Process	9–10
The Constitution	6–8
United States Geography	5–8
Spelling	4–7
Grammar	4–5
Grammar Review	5–6
English Review	7–8
Elementary English 2200	5–6
Intermediate English 2600	7–9
Advanced English 3200	10–12
Building Vocabulary	6–8

B. *Vocational Training Shop*

Barbering

C. *Related Trade Subjects* *Grades*

None

D. *Music Instruction*

None

E. *Cell Study and Correspondence*

English	4–8
Mathematics	1–8
Bookkeeping	9–12
Business Law	9–12
Business Mathematics	9+
Biology	9–10
English Literature	9–12
American History	9–11+
World History	9–10
Reading Comprehension	5–9+

F. *Miscellaneous Courses*

College Proficiency Series	
Freshman English	13
Sociology	13–14
Calculus A and B	13–14
Accounting	13–14
American Government	13–14
American History	13–14
Western Civilization	13–14
Biology	13
Economics	13–14
College Proficiency Series	
Physics	13
American Literature	13–14
European History	13–14
Shakespeare	13–14

	Grades
Statistics	13–14
Spanish	13–16
French	13–16
Extension College Courses	
Electronics	13–14

G. *Physical Education and Recreation (Outdoors)*

Baseball
Softball
Basketball
Football
Horseshoe Pitching
Track and Field
Bobsledding
Skiing (Slalom)
Ice-Skating

II. INDUSTRIAL SHOPS

A. *Cotton Shop #1*

Manufacturers Cotton Section Beams which is a preparatory process to weaving.

Job Titles: Clerk—Research Clerk—Slasher Operator—Slasher Operator Assistant—Harness Operator—Reeder—Porter.

B. *Cotton Shop #2*

Process: Warp Cotton Section Beams.

Job Titles: Warper Operator—Winder—Creeler—Beam Man—Mop Yarn Maker—Mechanic—Porter—Elevator Operator.

C. *Cotton Shop #3, #4 and #5*

Process: Cotton Spinning.

Job Titles: Draw Frame Operator—Slubber Operator—Speeder Operator—Mechanic—Oiler—Assistant Mechanic—Porter—Spinner—Doffer—Roll Coverer—Spindle Setter—Tape Sewer—Instructor.

D. *Cotton Shop #6*

Process: Cotton Preparation.

Job Titles: Picker Operator—Carder—Stripper — Doffer — Grinder — Mechanic — Porter—Runner.

E. *Weave Shop*

Product Manufactured: Woven Cloth.

Job Titles: Weaver—Mechanic—Head Mechanic—Needle Man—Warp Fitter—Filling Winder—Porter—Instructor—Trainee.

F. *Garment Manufacturing Shop*

Products Manufactured: Male Clothing.

Job Titles: Single Needle Sewer—Double Needle Sewer—Button Hole Maker—Button Attacher—Serger—Elastic Attacher—Zipper Attacher—Bar Tack Operator—Snap Fastener Operator—Tailor—Presser—Pattern Maker—Marker and Cloth Layer—Cutter—Mechanic—Assistant Mechanic—Clerk—Instructor—Trainee.

G. *Machine and Tool Shop for Textile Units*

Functions: Repairs Industrial Shop machines, tools, and equipment. Manufactures machine parts.

Job Titles: Machinist—Screw Machine Operator—Welder—Stock Clerk—Porter.

H. *Industries Storeroom for Textile Units*

Functions: Receives, checks and issues raw materials and supplies. Receives and checks finished products and prepares same for shipment.

Job Titles: Shipping Clerk—Baler—Floor Man —Runner—Clerk.

I. *Dye and Cloth Finishing Shop*

Functions: Mix dyes in accordance to formulas. Prepares cloth for bleaching, dying and finishing.

Job Titles: Raw Stock Dyer—Raw Stock Dryer —Kier Bleacher—Washer—Cloth Folder—Cloth Dryer—Extractor—Sanforizer—Assistant Sanforizer—Hemmer—Inspector—Mechanic — Trimmer — Clerk — Porter — Runner.

J. *Industrial Office*

Functions: Under the supervision of civilian office employees, perform various clerical and stenographic functions.

Job Titles: Payroll Clerk—Finished Goods Clerk—Purchase Order Clerk—Accounts Receivable Clerk—Raw Material Clerk—General Typist—Cost Clerk—Secretary to Superintendent—Runner—Porter.

III. MAINTENANCE SHOPS

Carpenter Shop
Paint Shop
Sheet Metal Shop
Welding Shop

IV. MENTAL HYGIENE SERVICES

Psychiatric: One full-time psychiatrist and four part time psychiatrists who make a total of six visits every two weeks. Type of service: Diagnostic evaluations and individual psychotherapy.

Psychological: Two visiting psychologists make a total of four visits every two weeks. One devotes his time to intelligence and personality testing, the other to group counseling.

V. SPECIALIZED REHABILITATION PROGRAMS

Tuberculosis Facility
Plastic Surgery
Diabetic Program
Clinton Prison Diagnostic and Treatment Center in the Dannemora State Hospital facility.
Alcoholics Anonymous Program
Group Counseling Program—Psychological supervision
Hobby Craft Shop—Supplies and counseling

VI. OTHER SERVICES:

A. Guidance and counseling services provided by Service Unit Personnel.

B. Religious services, instruction and pastoral counseling provided by chaplains of three denominations.

C. Medical and dental services.

Affidavit of Petitioner Harold N. Butler, in Support of Motion to Dismiss Complaint on Grounds of Mootness.

Harold N. Butler, being duly sworn, deposes and says:

I am the Superintendent of Wallkill Correctional Facility and a defendant in this action. I submit this affidavit in behalf of a motion to dismiss this action on the ground that it has become moot and academic by reason of subsequent events.

On February 22, 1973 Cornelius Lucas was released on parole from Wallkill Correctional Facility. At the present time he is under the supervision of the Division of Parole, and neither I nor Commissioner Oswald have any direct contact with him or any immediate control over his activities. Accordingly, I respectfully submit that Mr. Lucas' case be dismissed because the relief prayed for in his complaint is no longer necessary, and because the alleged harmful consequences of his transfer from Wallkill Correctional Facility on June 8, 1972, have not materialized.

With respect to any personal property which Mr. Lucas claims was improperly taken from him at Clinton Correctional Facility prior to his return to Wallkill, this was done under the auspices of the staff at Clinton, and was not done with my knowledge or authorization. On January 4, 1972 I wrote to Superintendent LaVallee at Clinton, on Lucas' behalf, asking him to check into the missing items of property. On January 17, 1973 the Acting Superintendent at Clinton wrote to me that the items which were taken from Mr. Lucas on October 16, 1972, were contraband. On January 22, 1973 I sent another letter to the Acting Superintendent at Clinton, explaining that Lucas had been issued the missing items prior to his transfer to Clinton, and did not accept the determination that they were contraband.[*] At the present time, since Mr. Lucas is on parole, there is nothing further that I can do on his behalf because this matter involves a controversy between Mr. Lucas and the personnel at Clinton Correctional Facility, who are not under my supervision or control.

With respect to Mr. Newkirk, he was returned to his truck driving assignment on December 18, 1972. To the best of my knowledge, Mr. Newkirk has not been subjected to any intimidation or harassment by our staff as a result of his having brought this lawsuit, and has not been charged with any disciplinary offenses. I have discussed with Assistant Deputy Superintendent O'Mara the statements that he made to Mr. Newkirk and Mr. Lucas upon their return to Wallkill, and he advises me that he warned them that they would not be entitled to special treatment as a result of their re-transfer. He further advises me that he felt such an admonition was necessary because rumors were circulating through the institution that Mr. Newkirk and Mr. Lucas had been ordered back by the court, and that in the future no inmate could be transferred without first being brought up on charges.

In addition, regardless of any conversation that transpired between Mr. Newkirk and Mr. O'Mara, it is my intention as Superintendent of Wallkill Correctional Facility that Mr. Newkirk shall be treated fairly and shall not be subjected to any vindictive or retributive action as a consequence of his having been a party to this lawsuit.

Since Mr. Newkirk has been re-transferred to this institution and returned to his job, and since the release of Mr. Lucas on parole makes it apparent that the transfers from this institution in June, 1972 do not have an adverse effect on parole eligibility,[*] I respectfully submit that Mr. Newkirk's case should also be dismissed on the grounds that it is now moot and acadamic.

(Sworn to by Harold N. Butler on March 12, 1973.)

---

[*] I understand that these letters, which were given to Mr. Lucas, have been annexed to a letter to the Court from plaintiffs' counsel, dated February 27, 1973.

---

[*] Former plaintiffs Carl Oliver and David Rodriguez were also paroled subsequent to their June, 1972 transfer from Wallkill.

Affidavit of Daniel Pochoda, Esq., in Opposition to Motion to Dismiss on Grounds of Mootness, and Exhibits Annexed Thereto.

Daniel Pochoda, being duly sworn, deposes and says that:

1. He is an attorney for plaintiffs in this action and makes this affidavit in opposition to defendants' motion to dismiss the entire complaint on the ground of mootness.

2. Shortly after the end of trial in this matter defendants, by their attorneys, stated that they would return plaintiffs Newkirk and Lucas to Wallkill. Further, after questioning, they agreed to completely expunge the files of any record of the transfer, and to restore plaintiffs in every respect to their situations prior to the transfer.

3. This information was conveyed by himself and Ms. Lynn Walker, Esq., to the plaintiffs. They were anxious to return to Wallkill and clear their records, but they were concerned about a number of other matters. Among other things, they felt that an order from this court was necessary to protect them in the future. They were worried about being summarily removed once again from Wallkill after their return, especially since they felt strongly that there was no legitimate reason in terms of their activities or the situation at Wallkill to transfer them in the first place.

4. Ms. Walker and himself [sic] agreed at plaintiffs' request to pursue these matters with defendants.

5. Discussion on these and other matters was begun with defendants, by their attorneys, in an effort to reach an acceptable agreement, taking into account the concerns of all parties, and settle the entire case. However, the oft-stated position of defendants was that they had done no wrong in transferring plaintiffs, and, therefore, were not responsible for their dislocation or harsh experiences at the maximum security institutions. The offer to return plaintiffs to Wallkill was characterized as a magnanimous gesture on the part of defendant Butler, and not an acknowledgment that any illegal actions or even mistakes had been made. Defendants would not consider any type of promise, whether embodied in a stipulation or order, to the effect that persons would not be transferred for engaging in even legal and non-violent union activities, or more generally, that there would not be retaliation against persons exercising their constitutional rights at Wallkill.

6. As defendant Butler's affidavit in support of this motion reveals, defendants do promise to treat plaintiffs "fairly" in the future. This is not very reassuring, however, when taken with defendants' assertions that they acted fairly and reasonably in investigating and removing plaintiffs from Wallkill in the first place.

7. Defendants, by their attorneys, also refused to alter their transfer procedures in any manner. They consistently expressed the feeling that these summary transfers were necessary and proper, and, further, that to alter them would indicate that they had "lost" this case.

8. Defendants did indicate, by their attorneys, that a consent order, if it did not mention blame or wrongdoing, and did not alter future transfer procedures in any way, was a reasonable request, and that they envisioned "no problem" with signing one.

9. As can be seen from the attached letters it has become an unsurmountable problem. Even after the plaintiffs' proposed order, which was non-controversial to say the least, was altered at defendants' request, defendants changed their minds about signing.

10. This proposed order was never meant as a settlement of the entire case, but rather was felt necessary in light of the reasonable concerns of plaintiffs, and to judge the good faith of defendants.

11. Besides the problem with the Order, the value placed by the plaintiffs on promises by defendants was reduced by other actions. For example, shortly after plaintiffs return to Wallkill, an attorney for defendants informed him that plaintiffs would not be removing from the files the records of the transfer, as had been promised. At a later date he was informed that a new entry to the files was made by defendant Butler without prior approval from the plaintiffs. Again this violated an agreement between the parties and did not alleviate plaintiffs' fears.

12. Even after the threat by Mr. O'Mara, which plaintiffs made known to Mr. Butler shortly it occurred, plaintiffs were not told by anyone at anytime that engaging in union activities would not subject them to transfer from Wallkill. This information comes from personal interviews with the plaintiffs.

13. In the past three months, he has received communications from four persons recently transferred from Wallkill to maximum security prisons. These persons state that the transfers were unreasonable and unnecessary, and came as a complete surprise to them. They attribute them to vindictiveness on the part of particular administrators at Wallkill, or because they actively demanded certain rights.

(Sworn to by Daniel Pochoda, April 10, 1973.)

Affidavit of James Newkirk, Annexed to Foregoing Affidavit.

James Newkirk, being duly sworn, deposes and says:

1. He is a plaintiff in this action and makes this affidavit in opposition to defendant's motion to dismiss on the ground of mootness.

2. He felt that this lawsuit was necessary in the first place for a number of reasons and that most of these still exist today.

3. For example, he is still a member of the Inmate Labor Union at Wallkill and is interested in the continued functioning and legal recognition of this Union. However, since his return to Wallkill he has not spoken to other inmates or written to lawyers about this because of a fear of being transferred from Wallkill to a maximum security prison.

4. He believes that Mr. Butler is still very much opposed to the formation or even discussion of an Inmate Labor Union at Wallkill, and that he would take steps—including summary transfer as he did before—against persons promoting this idea.

5. In fact, shortly after his return to Wallkill, Assistant Superintendent O'Mara specifically threatened plaintiff Cornelius Lucas and himself with such a re-transfer. Mr. O'Mara stated that "it was a mistake" to even allow Mr. Lucas and himself back into Wallkill.

6. He is aware that defendant Butler has high regard for Mr. O'Mara, and often follows his recommendation—as he did when the initial decision to transfer plaintiffs was made.

Affidavit of James Newkirk, Annexed to Foregoing Affidavit.

7. The transfer procedures at Wallkill have remained the same, entirely unaffected by this lawsuit.

8. Thus, persons are still given no notice nor chance to explain prior to their removal, and are literally snatched up and shipped out.

9. In the past few months a number of such transfers have taken place. He was personally acquainted with a few of the men transferred, and in his estimation their behavior did not require such action.

10. He is aware that defendant Butler has not and it seems will not admit to any wrong doing in transferring Mr. Lucas and himself in the first place.

11. He believes that defendant Butler has not acted in good faith during the period since his return. For example, initially there was a promise to remove any mention of the transfer from his records, since it was felt that this could adversely affect his chances for parole, as well as for other Corrections Department programs. This promise was not kept. Then, a promise was made to send an explanatory letter to his file that met with his approval. This too, was not kept. Finally, an apparent agreement to sign a consent order which did not place any blame on any party and which he feels is necessary also fell through because of Mr. Butler's fear of being "stigmatized."

12. In light of all the above, he feels that an Order from this Court stating among other things that defendants Butler and Oswald were wrong to transfer Mr. Lucas and himself in the manner and for the reasons that they did, and directing them to adopt new transfer procedures and policies, is just as important and necesary now as ever.

(Sworn to by James Newkirk, April 9, 1973.)

Letter, Decenber 18, 1972, Annexed to Foregoing Affidavit.

LEGAL DEFENSE FUND

NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle, New York, N. Y. 10019 • 586-8397

December 18, 1972

Hillel Hoffman, Esq.
Assistant Attorney General
80 Centre Street
New York, New York

Re: *Newkirk v. Butler, 72 Civ. 2851*

Dear Mr. Hoffnan,

Enclosed you will find a copy of the draft consent order. In view of the threats made against the plaintiffs by Officer O'Mara at Walkill, and in view of the fact that the plaintiffs have not been fully restored to their previous positions at Wallkill, we feel it is appropriate to have an order entered in this caes. We recognize that defendant Butler has not contribted to this situation and has acted in good faith, but his agents have necessitated this order to allay plaintiffs' fears of retaliation.

I trust that the draft will meet with your approval. I have endeavored to make it as neutral as possible. Take care and I lookforward to hearing from you before December 25, 1972. I shall advise the Court of the status of our negotiations.

Truly yours,

Lynn J. Walker
Lynn J. Walker
Dan Pochoda
Attorneys for the Plaintiffs

LW:irp
Enclosure

Consent Order, Annexed to Foregoing Affidavit.

72 Civ. 2851

James Newkirk and Cornelius Lucas,

Plaintiffs,

v.

Harold N. Butler, Superintendent, Wallkill Correctional Facility, and Russell G. Oswald, Commissioner of Correctional Services of the State of New York,

Defendants.

[Draft]

Plaintiffs are two New York State prisoners who were on June 8, 1972 transferred from the Wallkill Correctional Facility, a medium security institution in Wallkill, New York, to Clinton Correctional Facility, a maximum security institution in Dannemora, New York. Plaintiffs brought an action pursuant to 42 U.S.C. § 1983 to secure their retransfer claiming that their First, Sixth and Fourteenth Amendment rights had been violated. Trial commenced on November 27, 1972, and was concluded on November 29, 1972. Upon conclusion of the trial, the parties undertook to settle the case in pursuance of which plaintiffs were voluntarily by the defendants retransferred to the Wallkill Correctional Facility. Therefore, upon consideration of the representations of counsel for the respective parties that all parties agree that the following shall constitute a final determination of this matter of the merits, it is by this Court this day of December, 1972, Ordered:

1. That plaintiffs, James Newkirk and Cornelius Lucas be retransferred to Wallkill Correctional Facility;

2. That plaintiffs be fully restored to all rights and privileges previously enjoyed at Wallkill Correctional Facility, including, but not limited to, placement in their previous employment at the wage level they would have received had they not been transferred;
3. That the transfer not be considered as reflecting on plaintiffs suitability for release on parole or for participation in any other program which the defendants may supervise or direct;
4. That plaintiffs are not to be threatened or punished in any way by defendants and/or their agents for having undertaken the instant action.

Dated:

So Ordered:

....

Robert J. Ward
United States District Judge

Consent:

....

Hillel Hoffman, Assistant
Attorney General

Attorney for the Defendants

....

Lynn Walker, Dan Pochoda

Attorneys for the Plaintiffs

Letter, December 19, 1972, Annexed to Foregoing Affidavit.

LEGAL DEFENSE FUND

NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle, New York, N.Y. 10019 • 586-8397

December 19, 1972

The Honorable Judge Robert J. Ward
The United States District Court
for the Southern District of New York
Foley Square
New York, New York

Re: *Newkirk* v. *Butler*, 72 Civ. 2851

Dear Judge Ward:

Dan Pochoda relayed the message to me that your Chambers wished to be advised of the status of our settlement negotiations. We are proceeding to agreement, but have not been able to do so as quickly as we would like because of the following matters: Assistant Attorney General Hoffman advised us that there is no way that mention of the transfers can be expunged from plaintiffs' records. We therefore agreed that a letter to the files from Superintendent Butler absolving plaintiffs from fault in the transfer would serve to mitigate any untoward effects which the transfer information might create. Two drafts of such a letter were prepared by Assistant Attorney General Hoffman. The first was unsatisfactory to us. The second might have sufficed with minor changes, but before all parties approved it, the letter was accidentally through a misunderstanding sent into the files by Superintendent Butler. Further, we have spoken with the plaintiffs and they have advised us of two distressing occurrences. First, they are not receiving the wages they

would have received had they not been transferred. Second, upon return to Wallkill, the Assistant Deputy Superintendent O'Mara in effect threatened plaintiffs by telling them that it was a "mistake" to bring them back and "warned" them that they could be shipped out again. Needless to say, Mr. Lucas and Mr. Newkirk feel somewhat uncertain of their situation at Wallkill.

For the above reasons, Dan Pochoda and I are asking Assistant Attorney General Hoffman to enter into a consent order with us, your Honor being willing. I enclose a draft of the consent order which I have previously furnished Assistant Attorney General Hoffman. It casts no aspersions on the defendants, and I believe will serve to allay plaintiffs' fears. At present, we are awaiting Mr. Hoffman's comments.

All parties are acting in good faith and we are hopeful of a speedy resolution of the matter. We will notify the Court as soon as a final agreement is reached.

Thank you for being so attentive and courteous to us all at the trial. The plaintiffs truly felt that they received justice in your Honor's Courtroom. Best wishes for the holiday season.

Truly yours,

Lynn Walker
(Mrs.) Lynn Walker
Attorney for Plaintiffs

LW:irp
cc: Dan Pochoda, Esq.
Hillel Hoffman, Esq.
Mr. Cornelius Lucas
Mr. James Newkirk

Enclosures

Letter, January 4, 1973, Annexed to Foregoing Affidavit.

LEGAL DEFENSE FUND

NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle, New York, N.Y. 10019 • 586-8397

January 4, 1973

Mr. J. E. LaVallee
Superintendent
Clinton Correctional Facility
Dannemora, New York 12929

Re: Property of Mr. James Newkirk,
Mr. Cornelius Lucas

Dear Sir:

I am writing in behalf of my clients, Mr. James Newkirk and Mr. Cornelius Lucas, who, up until early December, were incarcerated at your facility. They were then transferred and are presently at Wallkill Correctional Facility. They have now advised me that they still have not received their personal property from Clinton. I can appreciate that with the holidays many matters may be delayed, but any consideration which you can give to the expedition of the return of their property will be greatly appreciated. Thank you in advance.

Truly yours,

Lynn Walker
(Mrs.) Lynn Walker
Associate Counsel

LW:irp
cc: Mr. Dan Pochoda
Mr. Hillel Hoffman
Mr. Harold N. Butler
Mr. Cornelius Lucas
Mr. James Newkirk

Letter, January 23, 1973, Annexed to Foregoing Affidavit.

LEGAL DEFENSE FUND

NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle, New York, N. Y. 10019 • 586-8397

January 23, 1973

Mr. Hillel Hoffman
Assistant Attorney General
80 Centre Street
New York, New York

Re: Consent Order, *Newkirk* v. *Butler,*
72 Civ. 2851

Dear Mr. Hoffman:

Enclosed please find a revised copy of the proposed consent order. I have changed it so as to reflect your suggestions and am hopeful that in its present form it is agreeable to us all.

Again, the order is not meant to in any way cast a shadow upon the good faith of any of the parties. Hope to hear from you soon.

Very truly yours,

(Mrs.) Lynn Walker
Associate Counsel

LW:irp
cc: Dan Pochoda, Esq.

Consent Order, Annexed to Foregoing Affidavit.

72 Civ. 2851

◆

James Newkirk and Cornelius Lucas,
Plaintiffs,
v.

Harold N. Butler, Superintendent, Wallkill Correctional Facility, and Russell G. Oswald, Commissioner of Correctional Services of the State of New York,
Defendants.

◆

Plaintiffs are two New York State prisoners who were on June 8, 1972 transferred from the Wallkill Correctional Facility, a medium security institution in Wallkill, New York, to Clinton Correctional Facility, a maximum security institution in Dannemora, New York. Plaintiffs brought an action pursuant to 42 U.S.C. § 1983 to secure their retransfer claiming that their First, Sixth and Fourteenth Amendment rights had been violated. Trial commenced on November 27, 1972, and was concluded on November 29, 1972. Upon conclusion of the trial, the parties undertook to settle the case in pursuance of which plaintiffs were voluntarily retransferred to the Wallkill Correctional Facility by the defendants. Plaintiffs are, as of this date, incarcerated at that facility. Therefore, upon consideration of the representations of counsel for the respective parties that all parties agree that the following shall constitute a final determination of this matter of the merits, it is by this Court this day of 1973

Ordered:

1. That plaintiffs be fully restored to all rights and privileges previously enjoyed at Wallkill Correctional Facility, including, but not limited to, placement in their previous employment;

2. That the transfer not be considered as reflecting on plaintiffs suitability for release on parole or for participation in any other program which the defendants may supervise or direct; and
3. That plaintiffs are not to be threatened or punished in any way by defendants and/or their agents for having undertaken the instant action.

Dated:

So ordered:

Robert J. Ward
United States District Judge

Consent:

....
Hillel Hoffman, Assistant
Attorney General
80 Centre Street
New York, New York
Attorney for the Defendants

....
Lynn Walker
NAACP Legal Defense and
Educational Fund, Inc.
10 Columbus Circle, Suite 2030
New York, New York 10019
Attorney for the Plaintiffs

Letter, February 14, 1973, Annexed to Foregoing Affidavit.

LEGAL DEFENSE FUND
NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle, New York, N.Y. 10019
586-8397

February 14, 1973

Hillel Hoffman, Esq.
Assistant Attorney General
80 Centre Street
New York, New York

Re: *Newkirk* v. *Butler,* 72 Civ. 2581

Dear Mr. Hoffman:

I have not heard from you definitely as to whether your clients will enter into the revised Consent Order which I forwarded to you on January 23, 1973. While I have from the first appreciated the sincerity of your efforts to expedite matters, this continued inaction seems unnecessary and is causing concern to me and to my clients. Please advise me by the week's end as to your intentions in this regard. I feel that an order is needed to protect my clients, and if a satisfactory order by agreement cannot be arrived at in the immediate future, I intend to request the entry of an order by the Honorable Judge Robert J. Ward.

Truly yours,

Lynn Walker
(Mrs.) Lynn Walker
Associate Counsel

LW:irp
cc: Mr. Cornelius Lucas
Mr. James Newkirk
Mr. Dan Pochoda

Letter, February 21, 1973, Annexed to Foregoing Affidavit.

LEGAL DEFENSE FUND
NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle, New York, N.Y. 10019
586-8397

February 21, 1973

The Honorable Judge Robert J. Ward
The United States District Court
for the Southern District of New York
Foley Square
New York, New York

Re: *Newkirk* v. *Butler,* 72 Civ. 2851

Dear Judge Ward:

This letter is to advise you as to the status of negotiations regarding settlement of the above-captioned case. Regrettably, the news is not entirely positive.

On December 18, 1972, after oral conversations with Assistant Attorney General Hillel Hoffman, who represents the defendants, I mailed to him a Draft Consent Order. (See enclosed copy marked Exhibit "1".) In those conversations he indicated that Superintendent Butler did not appear adverse to entering into such a suitable order. Subsequently, Mr. Hoffman and I talked again and he stated that Superintendent Butler felt that the Draft should be modified by exclusion of subparagraph 1 in which the retransfer of plaintiffs to Wallkill was ordered. I agreed to this request. Mr. Hoffman also told me that the Superintendent did not approve of that portion of subparagraph 2, which recited that plaintiffs were to receive the wages they would have received had they not been transferred. While I felt that this was a necessary portion of the Order, I nevertheless agreed to its excision upon Mr. Hoffman's assurances that plaintiffs would receive appropriate wages as soon as was feasible. On January 23, 1973, I mailed what I hoped would be the final Consent Order to Mr. Hoffman. (See enclosed copy marked Exhibit "2".) He advised me that he would forward same to Superintendent Butler. After substantial delay, I wrote to Mr. Hoffman on February 14, 1973, asking the reason why. (See enclosed copy marked Exhibit "3".) On February 16, 1973, Mr. Hoffman called and advised my secretary, Miss Ivalina Passe, that Superintendent Butler had determined not to enter into any Consent Order at all.

It now appears that Mr. Cornelius Lucas will be released later this month on parole so that an Order is not needed as to him. However, as I explained to the Court in my letter of December 19, 1972, I believe that some Order is still needed in this case. Your Honor may recall that Assistant Deputy Superintendent O'Mara in effect threatened plaintiffs upon their return to Wallkill by telling them that it was a "mistake" to bring them back and "warning" them that they could be shipped out again. Mr. Newkirk was rightfully intimidated by that remark and remains uncertain of his situation at Wallkill.

Mr. Dan Pochoda, Esq., and I respectfully request your Honor, therefore, to enter an Order in this case along the lines detailed in Exhibits 1 and 2 attached hereto. If your Honor please, I would be glad to draw up such an Order for your Honor and/or be anxious to meet with your Honor at your convenience to discuss this matter further. I can appreciate that this may seem an inconsequential request, but for my client, Mr. Newkirk's protection and ease of

mind, it is nevertheless a vital one. Thank you very much in advance for your consideration of this letter.

Very truly yours,

LYNN WALKER
(Mrs.) Lynn Walker
(Mr.) Dan Pochoda
Attorneys for the Plaintiffs

LW:irp
cc: Mr. Hillel Hoffman
Mr. Dan Pochoda
Mr. James Newkirk
Mr. Cornelius Lucas

Letter, February 23, 1973, Annexed to Foregoing Affidavit.

(Emblem)

STATE OF NEW YORK
DEPARTMENT OF LAW
State Office Building
80 Centre Street
New York, N. Y. 10013
Telephone: 488-3289

LOUIS J. LEFKOWITZ
Attorney General

February 23, 1973

Re: Newkirk v. Butler
72 Civ. 2851

Hon. Robert J. Ward
United States District Court
United States Court House
Foley Square
New York, New York 10007

Dear Judge Ward:

I am writing this letter in response to Mrs. Walker's letter of February 21, 1973.

As Mrs. Walker's letter indicates, Cornelius Lucas will soon be released on parole, and an order will not be necessary as to him. I would further suggest that the release of Lucas on parole will render his case academic since no damages have been requested on his behalf, and I intend to move to dismiss his case on this ground in the near future.

With regard to plaintiff Newkirk, we strongly object to any order being entered on his behalf. Mr. Newkirk was returned to Wallkill Correctional Facility by Mr. Butler almost immediately after the trial was concluded, and he has since been returned to his truck driving job. We believe that Mr. Butler acted in good faith in restoring Mr. Newkirk to his former assignment, and should not be stigmatized by being forced to enter into a consent decree, or by being ordered to do what he has already done.

Mr. Butler is not personally responsible for any purported threats made by Mr. O'Mara, and should any difficulties arise in the future, counsel may make further application to the court if it appears that Mr. Newkirk is being threatened or punished for having undertaken the instant action. In the meanwhile, there does not appear to have been any serious problems with Mr. Newkirk at Wallkill during the past three months, and it is my intention to move to dismiss his case in conjunction with Mr. Lucas' case, on the grounds that it too is academic.

The defendants also wish to express their appreciation to Your Honor for the extremely fair trial that was conducted in this case.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By HILLEL HOFFMAN
HILLEL HOFFMAN
Assistant Attorney General

HH:kp

cc: Mrs. Lynn Walker
Mr. Daniel Pachoda

Letter, February 27, 1973, Annexed to Foregoing Affidavit.

LEGAL DEFENSE FUND
NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle, New York, N.Y. 10019
586-8397

February 27, 1973

The Honorable Judge Robert J. Ward
The United States District Court
The United States Courthouse
Foley Square
New York, New York 10007

Re: *Newkirk* v. *Butler,* 72 Civ. 2851

Dear Judge Ward:

I feel that it is necessary to respond to Mr. Hoffman's letter of February 23, 1973. Frankly, I am surprised at the lack of good faith which the letter evidences. As I advised the Court previously, for months now Mr. Hoffman has represented to me that his clients would not oppose a consent order. Now he proposes to move to dismiss the action.

I think that it is highly unnecessary for any such motion to be filed. What we need is a settlement order. Unless Mr. Hoffman is by implication refusing to settle this case, I can see no reason why such an order should not be entered. However, in the event that any motion to dismiss is filed, it is our intention to oppose it and to petition the court for a protective order along the lines sought earlier in this litigation. It is disingenuous, indeed, for Mr. Hoffman to assert that Superintendent Butler "is not personally responsible for any purported threats made by Mr. O'Mara," his agent. If this is the case, an order by

this Court assigning responsibility to Superintendent Butler to direct his agents not to harass Mr. Newkirk, who remains at Wallkill, is certainly advisable.

Moreover, Mr. Lucas has not been made whole by the Department of Corrections. I enclose copies of correspondence between Mr. Lucas, Superintendent Butler and Superintendent LaVallee at Clinton Correctional Facility, the transferee institution, which indicates that items of personal property valued at approximatelly $63.00 by Mr. Lucas, and lawfully in his possession at Wallkill, were seized from him at Clinton as "contraband" and never returned. But for the transfer, Mr. Lucas, a man of humble means, would not have lost these items. Certainly any good faith on the part of Mr. Hoffman and Superintendent Butler would dictate that Mr. Lucas be given his property back or be compensated for its loss. At this late date, my clients and I are deeply dismayed by the defendants' actions. Some protection is needed by Mr. Newkirk lest the agents for whose acts Superintendent Butler disclaims responsibility feel free to subject Mr. Newkirk to further threats and harassment at will.

Thank you.

Very truly yours,

Lynn Walker
(Mrs.) Lynn Walker
(Mr.) Dan Pochoda

Attorneys for the Plaintiffs

LW:irp
cc: Mr. James Newkirk
Mr. Cornelius Lucas
Assistant Attorney General
Hillel Hoffman

Letter, March 2, 1973, Annexed to Foregoing Affidavit.

(Emblem)

State of New York
Department of Law
State Office Building
80 Centre Street
New York, N.Y. 10013
Telephone: 488-3289

March 2, 1973

Louis J. Lefkowitz
Attorney General

Re: Newkirk v. Butler

Hon. Robert J. Ward
United States District Judge
United States Court House
Foley Square
New York, New York 10007

Dear Judge Ward:

I am advised by the Clerk's Office at Wallkill Correctional Facility that Cornelius Lucas was released on parole on February 22, 1973. With regard to the items of property that he claims were seized from him at Clinton Correctional Facility, I was not aware from any previous conversation or correspondence that this difficulty had arisen. However, in answer to Mrs. Walker's statement in her February 27, 1973 letter, that "any good faith on the part of Mr. Hoffman and Superintendent Butler would dictate that Mr. Lucas be given his property back or be compensated for its loss," I wish to call Your Honor's attention to the efforts made on Mr. Lucas' behalf by Superintendent Butler, as indicated by the correspondence

annexed to Mrs. Walker's letter. I would also call Your Honor's attention to the fact that I personally made telephone calls to Clinton Correctional Facility to expedite the shipment of Lucas' and Newkirk's property after their retransfer, which had been delayed because Clinton had only one vehicle for such purposes. Whatever property was lost either as a result of Lucas' re-transfer or as a result of a shakedown at Clinton on October 16, 1973 was not the fault of Superintendent Butler, and raises a new dispute between Mr. Lucas and the staff at Clinton. Hopefully, this matter may be resolved amicably, but it does not relate directly to the claims against Superintendent Butler, which dealt with the legality of plaintiffs' transfer from Wallkill and its effect on plaintiffs' institutional records.

With regard to any alleged statements made by Deputy Superintendent O'Mara to plaintiffs, we wish to emphasize that Mr. O'Mara is not an "agent" of Mr. Butler, because Mr. O'Mara is an employee of the State of New York, who was appointed from a civil service list, and is not an employee of Mr. Butler. Mr. O'Mara is not a defendant in this action, and whatever statements he may have made to plaintiffs cannot be attributable to Superintendent Butler, who has acted in good faith, and did not authorize any such statements. Furthermore, I am advised that Mr. Newkirk was returned to his truck driving assignment on December 18, 1972, and has not been the subject of any disciplinary charges since that time, which would seem to indicate that things have been running smoothly.

Finally, with regard to Mrs. Walker's contention that we have not acted in good faith in changing our position about signing a consent order, I would submit that our willingness to return both plaintiffs to their assignments at Wallkill as soon as the trial was completed, represented an act of good faith which we were under no obligation to perform. While

Letter, March 2, 1973, Annexed to Foregoing Affidavit.

I did represent to Mrs. Walker initially that Mr. Butler would consider signing a consent order along certain modified lines, Mr. Butler subsequently changed his mind after examining plaintiffs' proposed drafts, because he believed that such an order would jeopardize his authority at Wallkill, and would stigmatize him as having lost the case. Undoubtedly, Mr. Butler was influenced by the fact that in January, Mr. Lucas had been granted an open parole date by the Board of Parole, and that in December, Mr. Newkirk had returned to his truck driving assignment and seemed satisfied.

Under these circumstances we reiterate our opposition to any order being entered against the defendants, and we respectfully urge this Court to consider our motion to dismiss the case, which will be filed in the near future, as soon as the necessary paperwork can be transmitted between Mr. Butler and our office.

Respectfully yours,

LOUIS J. LEFKOWITZ
Attorney General

By Hillel Hoffman
HILLEL HOFFMAN
Assistant Attorney General

HH:jc

cc: Mrs. Lynn Walker, Esq.
Legal Defense Fund
10 Columbus Circle
New York, New York 10019

Daniel Pachoda, Esq.
Legal Aid Society
119 Fifth Avenue
New York, New York 10003

Reply Affidavit of Hillel Hoffman, Esq., in Support of Motion to Dismiss on Grounds of Mootness and Exhibits Annexed Thereto.

HILLEL HOFFMAN, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for defendants. I submit this affidavit in reply to certain statements contained in the affidavit of Daniel Pachoda, dated April 10, 1973, filed in opposition to defendants' motion to dismiss; and in reply to other arguments made in plaintiffs' affidavits and briefs.

In paragraph # 2 of his affidavit Mr. Pachoda states that the defendants "agreed to completely expunge the files of any record of the transfer, and to restore plaintiffs in every respect to their situations prior to the transfer." To the best of my recollection no such agreement was made by the defendants because the Correction Department could not alter its records to the extent of denying the existence of the transfer completely. Rather what the defendants did agree to do was to place a new memorandum in plaintiffs' files which would explain the reasons for the transfers in non-prejudicial terms, and would replace the previous memoranda that had been put in the files at the time of the transfer, and challenged by plaintiffs at trial.

To this end I drafted a memorandum from Superintendent Butler to Commissioner Oswald, and forwarded a copy to Mr. Pachoda for his approval. Mr. Pachoda voiced certain objections to this first draft, and I redrafted it without the material which Mr. Pachoda considered prejudicial. I then read the revised memorandum over the phone to Mr. Pachoda, and he indicated to me that he had no objection to it. During this conversation Mr. Pachoda said nothing about having to consult with plaintiffs before this revised memorandum could be placed in their files. Accordingly, I assumed from our conversation that the memorandum was acceptable, and I advised Superintendent Butler to place it in plaintiffs' files, and to remove the previously challenged memoranda.

This was done by Superintendent Butler on December 14, 1972, and his letter to me and the accompanying memorandum are annexed hereto as defendants' exhibit 1. In so far as Mr. Pachoda now asserts in paragraph "11" of his affidavit that the placement of the revised memorandum in plaintiffs' files without the prior approval of plaintiffs "violated an agreement between the parties," this is false, to the best of my recollection. Indeed, the fact that a misunderstanding had occurred is evidenced by a letter from Mrs. Walker to the Court, dated December 19, 1972, which states as follows:

> "We are proceeding to agreement, but have not been able to do so as quickly as we would like because of the following matters: Assistant Attorney General Hoffman advised us that there is no way that mention of the transfers can be expunged from plaintiffs' records *We therefore agreed* that a letter to the files from Superintendent Butler absolving plaintiffs from fault in the transfer would serve to mitigate any untoward effects which the transfer information might create. Two drafts of such a letter were prepared by Assistant Attorney General Hoffman. The first was unsatisfactory to us. The second might have sufficed with minor changes, but before all parties approved it, the letter was *accidentally through a misunderstanding* sent into the files by Superintendent Butler." (letter of Mrs. Walker, dated December 19, 1972, annexed hereto as defendants' exhibit 2) (emphasis added).

Thus, what plaintiffs' counsel once characterized as an accidental misunderstanding, has now been transformed into a broken agreement by the defendants.

With regard to the signing of a consent order, this matter also needs full elucidation before a decision can be reached on the sincerity of the parties. A consent order was first proposed to me by plaintiffs' attorneys during the middle of December, 1972. At that time I was more sympathetic to such an order because plaintiff Newkirk had not yet been returned to his truck driving job, plaintiff Lucas had not yet met with the parole board, both plaintiffs had apparently not received their property from Clinton Correctional Facility, and both plaintiffs claimed that Deputy Superintendent O'Mara had threatened them upon their return to Wallkill. Under these circumstances I agreed to pursue the matter, and a first draft was sent to me by Mrs. Walker on December 18, 1972, and I forwarded it to Superintendent Butler.

On January 4, 1973, Superintendent Butler wrote to me that he would agree to paragraphs three and four of the proposed order, but that he would not argee to paragraphs one and two. Subsequently I conveyed these objections to Mr. Walker, and she sent me a revised draft on January 23, 1973, which I forwarded to Superintendent Butler on January 26, 1973.

In the interim however, certain events had occurred which made Mr. Butler believe that it would no longer be advisable to enter into a consent agreement. First, Cornelius Lucas had received a release date from the Board of Parole, which meant that he would no longer be under Mr. Butler's supervision or control. Secondly, James Newkirk had since been returned to his truck driving assignment and seemed to be satisfied, which eliminated the need for an order restoring him to his previous employment. In addition, there had been no incidents involving Newkirk during the two months since his return to Wallkill, notwithstanding the purported "threat" from Deputy Superintendent O'Mara.

Under these circumstances Mr. Butler believed that entering into a consent order would be a bad precedent, and he communicated his objections to me on February 8, 1973. On February 16, 1973 I advised Mrs. Walker's secretary that we were no longer willing to sign a consent order, and that under the changed circumstances of the case, we would move to dismiss the complaints. In view of Lucas' release on parole and Newkirk's restoration to his truck driving job, we submit that the refusal of Superintendent Butler to agree to a consent order is entirely understandable and reasonable.

In their affidavits and memorandum of law, plaintiffs also make much of the fact that defendants are unwilling to concede that they acted illegally in transferring Lucas and Newkirk to other institutions. This is a curious assertion by plaintiffs when it is considered that there are no cases in this Circuit, and barely any cases in any other Circuit, which hold that an inmate who is transferred from one institution to another, without loss of good time or the imposition of substantial discipline, is entitled to a full due process hearing. Indeed, as we pointed out in in our pretrial memorandum of law, the overwhelming number of cases that have dealt with the transfer issue have recognized the authority of prison officials to transfer inmates without due process hearings, absent the imposition of additional penalties. Significantly, plaintiffs have cited no cases in support of their often repeated assertion that the defendants have acted illegally.

What is apparent from plaintiffs' affidavits and briefs is that they are attempting to utilize this case as a vehicle for reforming the transfer procedures for at least all Wallkill inmates, although the instant case is not a class action, and the evidence at trial pertained to Newkirk and Lucas. Plaintiffs' assertions about unnamed inmates who have been transferred at unspecified times, should not be the basis of this Court issuing unprecedented declaratory and

injunctive relief, particularly where a full trial on the merit has already been concluded.

Finally, plaintiffs also complain of alleged adverse consequences arising in the future from the transfers at issue. This assertion is almost entirely undermined by the fact that four of the five inmates who were transferred on June 8, 1972 have since been released on parole (Oliver, Rosario, Rodriquez and Lucas). While the defendant Superintendent and Commissioner cannot guarantee plaintiff Newkirk's release on parole when he meets the Parole Board for the first time in July, 1975, it is apparent from the disposition in four similar cases that the June 8th transfers have not had any prejudicial effect on parole eligibility.

Furthermore, the memorandum which Superintendent Butler placed in Newkirk's file specifically states that the transfer was administrative rather than disciplinary in nature, and that it should have no bearing in any future determinations made by the Parole Board or the time allowance committee. As we noted before, this memorandum was placed in plaintiff's file with the good faith understanding that it was acceptable to plaintiff's counsel.

Lastly, it is significant that apart from one purported threat by Deputy Superintendent O'Mara to Newkirk immediately upon Newkirk's arrival at Wallkill, there has not been a single incident in the four months since Newkirk has been returned to that institution, in which he claims that he was harassed or treated unfairly by any member of the staff. This absence of any mistreatment, in addition to Mr. Butler's sworn statement that Newkirk will be treated fairly and not subjected to retaliation for having participated in this lawsuit, clearly obviates the need for any order to be entered on Newkirk's behalf.

WHEREFORE, defendants' motion to dismiss the complaint on the ground of mootness should be granted in all respects.

(Sworn to by Hillel Hoffman, April 11, 1973.)

Exhibit 1.

State of New York
Department of Correctional Services
WALLKILL CORRECTIONAL FACILITY
Wallkill, New York 12589
(Emblem)
Harold N. Butler
superintendent

IN REPLYING
PLEASE REFER TO

December 14, 1972

RE: Cornelius Lucas—Wk#9659
James Newkirk, Jr.—Wk#9704

Mr. Hillel Hoffman
Assistant Attorney General
Department of Law
80 Centre Street
New York, New York 10013

Dear Mr. Hoffman:

This is to advise that I have this date signed the Memorandum which you forwarded to me relative to the above named inmates, and I am placing copy in their files. We will remove the previous Memorandums relative to their transfer to Clinton, as you suggested, from their Central, Service Unit and Parole files, and hold them separately.

Dan Pachoda did visit Wallkill yesterday, and asked for me but I was in Albany. He just telephoned. There seems to be no serious problem. The inmates were concerned about Mr. O'Mara's initial talk with them after their return. However, I think that they now understand that he was indicating that they would receive the same treatment as any other inmate confined here.

Exhibit 1.

I am forwarding copies of the new Memorandum to Commissioner Oswald for filing in their Albany folders, and requesting removal of the previous ones.

I certainly appreciate your assistance.

Sincerely,

Harold N. Butler
Harold N. Butler
Superintendent

CC—copy of signed Memorandum

Exhibit 1.

MEMORANDUM

To: RUSSELL G. OSWALD
Commissioner of Correctional Services

FROM: HAROLD N. BUTLER
Superintendent
Wallkill Correctional Facility

Re: (James Newkirk) (Cornelius Lucas)

As you know, during the first week of June, 1972 there was a state of unrest at this facility due to animosity between members of the inmate liason committee and inmates who were active on behalf of an inmate labor union. As you are further aware, it was necessary to transfer five inmates to other correctional facilities on June 8, 1972 in order to prevent any harm from coming to them and to other inmates and personnel. Among the inmates transferred was the above named inmate who went to Clinton Correctional Facility. At the present time the situation at Wallkill has been quieted and I believe it would be appropriate to restore this inmate to our program.

As you know this transfer was entirely administrative in nature, and was not accompanied by disciplinary charges or intended as a disciplinary action. This transfer should have no bearing in any future determinations made by the Board of Parole or the time allowance committee.

Respectfully submitted,

HAROLD N. BUTLER
HAROLD N. BUTLER
Superintendent

cc: Parole

December 14, 1972

Exhibit 2.

LEGAL DEFENSE FUND NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
10 Columbus Circle,
New York N. Y. 10019 • 586 8397

December 19, 1972

The Honorable Judge Robert J. Ward
The United States District Court
for the Southern District of New York
Foley Square
New York, New York

Re: *Newkirk* v. *Butler*, 72 Civ. 2851

Dear Judge Ward:

Dan Pochoda relayed the message to me that your Chambers wished to be advised of the status of our settlement negotiations. We are proceeding to agreement, but have not been able to do so as quickly as we would like because of the following matters: Assistant Attorney General Hoffman advised us that there is no way that mention of the transfers can be expunged from plaintiffs' records. We therefore agreed that a letter to the files from Superintendent Butler absolving plaintiffs from fault in the transfer would serve to mitigate any untoward effects which the transfer information might create. Two drafts of such a letter were prepared by Assistant Attorney General Hoffman. The first was unsatisfactory to us. The second might have sufficed with minor changes, but before all parties approved it, the letter was accidentally through a misunderstanding sent into the files by Superintendent Butler. Further, we have spoken with the plaintiffs and they have advised us of two distressing occurrences. First, they are not receiving the wages they would

Exhibit 2.

have received had they not been transferred. Second, upon return to Wallkill, the Assistant Deputy Superintendent O'Mara in effect threatened plaintiffs by telling them that it was a "mistake" to bring them back and "warned" them that they could be shipped out again. Needless to say, Mr. Lucas and Mr. Newkirk feel somwehat uncertain of their situation at Wallkill.

For the above reasons, Dan Pochoda and I are asking Assistant Attorney General Hoffman to enter into a consent order with us, your Honor being willing. I enclose a draft of the consent order which I have previously furnished Assistant Attorney General Hoffman. It casts no aspersions on the defendants, and I believe will serve to allay plaintiffs' fears. At present, we are awaiting Mr. Hoffman's comments.

All parties are acting in good faith, and we are hopeful of a speedy resolution of the matter. We will notify the Court as soon as a final agreement is reached.

Thank you for being so attentive and courteous to us all at the trial. The plaintiffs truly felt that they received justice in your Honor's Courtroom. Best wishes for the holiday season.

Truly yours,

LYNN WALKER
(Mrs.) Lynn Walker
Attorney for Plaintiffs

LW:irp
cc: Dan Pochoda, Esq.
Hillel Hoffman, Esq.
Mr. Cornelius Lucas
Mr. James Newkirk

Enclosures